

# **A Guide to By-Law Enforcement for Owners Corporations**

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Do you have a trouble maker in your building? Take these 5 steps and restore peace to your strata community:

## **1. Talk to the troublemaker**

Too often we forget that a simple knock on our neighbour's door might just be enough to resolve a noise problem or remind a resident that the building has rules (by-laws) about many things, from washing on balconies to conducting renovation works. Try the "friendly chat" approach first.

## **2. Send an initial letter**

It is often a good idea to send the offending resident an 'informal' written notice, prior to commencing the formal procedures detailed further below.

For best effect, this should be sent by the strata manager – if one is engaged – and should clearly state the behaviour that is in breach of the by-laws, including setting out or attaching a full copy of the by-law in question.

The letter may include words to the effect:

*In the absence of compliance within (for example) 14 days, the strata committee intends to authorise the issue of a formal "Notice to Comply" under section 146 of the Strata Schemes Management Act 2015, which may ultimately expose you (the resident) to a fine of up to \$1,100.*

## **3. Issue a "Notice to Comply" with the by-laws**

Section 146 of the *Strata Schemes Management Act 2015* (NSW) ("SSM Act") permits owners corporations to issue a formal notice called a "Notice to Comply" to residents breaching the building's by-laws.

[\[Access section 146 here\]](#)

This notice can only be issued by your strata manager if they have authority to do so under their agency agreement.

If they do not have authority, you will need the strata committee to approve the issue of the notice.

The notice must comply with the form approved by NSW Fair Trading, or it will not be valid and any future application to the Tribunal to enforce the notice is at risk of failure.

[\[Access the approved form of a Notice to Comply via NSW Fair Trading here\]](#), which includes the rules for effective service of the Notice on an owner or occupier.]

It may be necessary to prove that a person was actually sent the Notice to Comply. There is a sample Affidavit of Service **at appendix “A” to this guide**, which should be completed by the person who physically issues the Notice to Comply.

There is a sample motion for resolution at a strata committee meeting **at appendix “B” to this guide**, should your committee need to resolve to issue a Notice to Comply.

If the resident does not comply with the Notice and continues to breach the building’s by-laws, you can apply to the NSW Civil and Administrative Tribunal for a penalty order of up to \$1,100, payable to the owners corporation (see step 5 below).

#### **4. Apply for mediation**

Unless you are applying for a penalty order, it is necessary to first attempt mediation through NSW Fair Trading before you can apply to the Tribunal for an order against the difficult resident.

[\[Access the online application for mediation via NSW Fair Trading here\]](#)

There is a sample motion for resolution at a strata committee meeting at **Appendix C to this guide**, by which the committee may approve the filing of an application for mediation.

If either

- a. the resident declines to attend mediation; or
- b. mediation is not successful in resolving the dispute,

you can apply to the Tribunal for an order.

#### **5. Apply for Tribunal order**

After attempting mediation under step 4 above, or after issuing a Notice to Comply under step 3 above, you can apply to the Tribunal for an order that:

- a. the resident comply with the relevant by-law; and/or
- b. pay a penalty to the owners corporation of up to \$1,100 for failure to comply with the Notice to Comply (note: an application for a penalty order can only be made by the owners corporation, not by an individual owner or tenant).

An application for an order that the resident comply with the by-law is made under [section 232 of the SSM Act](#).

An application for an order that the resident pay a penalty for failure to comply with a Notice to Comply is made under [section 147 of the SSM Act](#).

Remember that the commencement of legal proceedings – particularly where legal costs may be expended by the owners corporation – should be approved by the owners in general meeting. This requirement is in [section 103 of the SSM Act](#).

There is a sample motion for resolution at a general meeting at **Appendix D to this guide**, by which the general meeting may approve the commencement of NCAT proceedings.

You will need to file evidence proving the by-law breach and attend a hearing in person before a Member of the Tribunal.

[\[Access the NCAT application form here\]](#)

[\[Access the NCAT Fact Sheet on strata scheme applications here\]](#)



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**See attached:**

**Appendix A:** *Sample Affidavit of Service*

**Appendix B:** *Sample strata committee meeting motion to approve the issue of a Notice to Comply*

**Appendix C:** *Sample strata committee meeting motion to approve an application for mediation*

**Appendix D:** *Sample general meeting motion to approve an application to NCAT*

## Appendix A

### SAMPLE AFFIDAVIT OF SERVICE

**[NAME] [DATE]**

#### TRIBUNAL DETAILS

Tribunal	NSW Civil and Administrative Tribunal
Division	Consumer and Commercial
Registry	Sydney
Case number	

#### TITLE OF PROCEEDINGS

Applicant	<b>The Owners Strata Plan No #####</b>
Respondent	<b>[name]</b>

#### FILING DETAILS

Filed for	<b>The Owners Strata Plan No #####</b> [applicant]
Filed in relation to	Applicant's claim
Legal representative	[solicitor on record] [firm]
Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

**AFFIDAVIT**

Name

Address

Occupation

Date

I [say on oath affirm]:

- 1 I am a person authorised by the owners corporation to serve the attached Notice to Comply with a By-law.
- 2 I am over the age of 16 years.
- 3 On the [date] at [place], I served [name of lot owner or occupier] with the attached Notice to Comply with a By-law by delivering a true copy by [method of service] at [place of service] as required by the *Strata Schemes Management Act 2015*.
- 4 At the time of service [name of person served] stated [record what, if anything, the person served said].

SWORN at [place sworn] this [date sworn].

Signature of deponent

\_\_\_\_\_

Name of witness

Address of witness

Capacity of witness                   [#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]  
#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.<sup>1</sup>
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]  
#I have confirmed the deponent’s identity using the following identification document:

\_\_\_\_\_ Identification document relied on (may be original or certified copy)<sup>2</sup>

Signature of witness

\_\_\_\_\_

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[<sup>1</sup> The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[<sup>2</sup> "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see [Oaths Regulation 2011](#).]

## Appendix B

### Sample Strata Committee Motion to approve the Notice to Comply

THAT, in accordance with section 146(3) of the Strata Schemes Management Act 2015 ("the Act"), the issue of a notice under section 146(1) of the Act, in the form **annexed** to this notice of meeting, is approved by the strata committee.

Such notice is to be issued to the owners of Lot\_\_\_\_ in relation to \_\_\_\_\_ . The strata managing agent is authorised and directed to sign and seal the notice on behalf of the Owners Corporation.

## Appendix C

### Sample Strata Committee Motion to Apply for Mediation

THAT IT BE RESOLVED:

(a) to apply for mediation with NSW Fair Trading in respect of lot \_\_\_\_\_'s [insert lot number] breach of by-law \_\_\_\_\_ [insert by-law no.] and failure to comply with the Notice to Comply issued on \_\_\_\_\_ [insert date of notice to comply].

(b) The strata managing agent is authorised and directed to do all things necessary to file an application for mediation with NSW Fair Trading.

(c) The following members [if not all members] of the strata committee are authorised to act on behalf of the Owners Corporation at the mediation session, including taking all steps, in the committee members' reasonable discretion, necessary to resolve the current dispute between the Owners Corporation and lot \_\_\_\_:

[list name/s of strata committee members]

(d) Should the consent of the Owners Corporation in general meeting be required in respect of any matter proposed at the mediation, any agreement reached with the owner of lot \_\_\_\_ in mediation will be an agreement in principle only, with the strata committee members obliged to put that agreement before the owners in general meeting for ratification.

## Appendix D

### General meeting motion to commence legal proceedings

THAT IT BE RESOLVED:

(a) in accordance with s 103 of the Strata Schemes Management Act 2015, to make an application to the NSW Civil and Administrative Tribunal (NCAT) for orders in respect of lot \_\_\_'s [insert lot no.] breach of by-law no. \_\_\_ [insert by-law no.] including:

- (i) an application for penalty order, noting the breach of the Notice to Comply dated \_\_\_\_\_ [insert date of Notice to Comply] and/or
- (ii) an application for an order requiring lot \_\_\_ [insert lot no.] to comply with by-law \_\_\_ [insert by-law no] by \_\_\_\_\_ [insert steps required to be taken by lot \_\_\_ to ensure compliance with by-law \_\_\_\_\_

(b) [where there is to be legal representation] to engage the services of \_\_\_\_\_ [insert name of legal practice being engaged] in accordance with the terms of their Costs Agreement dated [insert date of costs agreement], a copy of which is annexed to this notice of meeting.

(c) to authorise and direct the strata managing agent/the below listed members of the strata committee to do all things and sign all documents necessary to instruct \_\_\_\_\_ [insert name of legal practice engaged] and to resolve the dispute between the Owners Corporation and the owner of lot \_\_\_ on terms that are in the best interests of the Owners Corporation, at all times being guided by and taking in to account the advice of \_\_\_\_\_ [insert name of legal practice].