



Guide for Smoke Free Strata Housing in Western Australia

By-Law resources

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4. By-Law resources

Appendix 1: Detailed procedure for adding a non-smoking by-law

1. A Strata Company may adopt a Schedule 1 by-law by a resolution without dissent or a Schedule 2 by-law by way of a special resolution.²⁷
2. To pass a resolution without dissent or a special resolution, a Strata Company must first convene a general meeting by providing sufficient written notice of at least 14 days to all owners specifying the proposed no-smoking resolution.²⁸
3. Sufficient written notice is given when:
 - a) at least 14 days' prior to the general meeting, a Strata Company gives each proprietor a notice of such meeting along with a copy of the proposed resolution no-smoking resolution²⁹ ; and
 - b) the notice is served on each proprietor either³⁰ :
 - i) personally; or
 - ii) by post at the proprietor's address for service appearing on the roll maintained by the strata company (if applicable); or
 - iii) to the lot address, if a roll is not maintained by a Strata Company; or
in any other manner specified in the by-laws.
4. At a general meeting, a resolution is passed if:
 - a) in case of Schedule 1 by-law³¹, against which no vote is cast by a person entitled to vote ; and
 - b) in case of Schedule 2 by-law³², it is supported by:
 - i) at least 50% of the lots in the scheme or owners whose votes have a value of at least 50% of the aggregate unit entitlement; and
 - ii) is not opposed by more than 25% of the votes.

The value of each vote is calculated based on the unit entitlement of each lot.

5. The voting requirements for a special resolution for strata schemes with only 3, 4 or 5 lots are different. In those schemes, not less than half the lots must vote in favour of the resolution and the total of lots voting in favour of the resolution must have a value of at least 50% of the aggregate unit entitlement of all the lots.
6. Any person entitled to vote on a resolution without dissent or a special resolution may also vote in support of or against the special resolution by serving their vote, in writing, to the Strata Company or all other owners within 28 days of the meeting.³³
7. A written vote is made and served by³⁴ :
 - a) the person signifying in writing (whether signed or not) that they agree or disagree with the resolution; and
 - b) sending it by pre-paid post to the Strata Company's address; or
 - c) in case of strata schemes with up to 5 lots, personally handing it over to an owner or sending it by pre-paid post at the address specified for the owner appearing on the roll maintained by the Strata Company (if applicable).

²⁷ Section 42(2)(c) of STA.

²⁸ Section 3B(1) and 3AC(1) of the STA.

²⁹ Section 3C of STA.

³⁰ Section 125 of the STA.

³¹ Section 3AC of the STA.

³² Section 3B(2) of STA.

³³ Section 3(B)(5),(6), 3AC(2) and (3) of STA.

³⁴ Section 125 of STA.

8. Any amendment or repeal to the by-laws or an additional by-law is not effective until³⁵ –
 - a) a Strata Company has allowed a period of 28 days after the meeting to lapse or expire for any person to serve his written vote on the strata company;
 - b) within 3 months after passing the special resolution adopting the by-law, the Strata Company has lodged a notice in the prescribed form with the Registrar of Titles; and
 - c) the Registrar of Titles has made a reference to the amendment, repeal or additional by-law on the appropriate registered strata/survey-strata plan.
9. The the prescribed form to lodge a notice with Landgate.
[https://www0.landgate.wa.gov.au/docvault.nsf/web/PS_STRATAFORMS/\\$file/FOR_DLI_Form21.pdf](https://www0.landgate.wa.gov.au/docvault.nsf/web/PS_STRATAFORMS/$file/FOR_DLI_Form21.pdf)

Appendix 2: Enforcing a non-smoking by-law

All owners, occupiers and invitees are required to comply with any non-smoking by-law implemented by a strata company. Section 42(5) of the *Strata Titles Act 1985 (WA)* provides that a lease of a lot or common property shall be deemed to contain an agreement by the tenant that he will comply with the by-laws in force.

If any owner, occupier or invitee does not comply with a non-smoking by-law, the strata company may need to take the following steps to enforce it:

1. A Strata Company will need to monitor activities of owners, occupiers and invitees on common properties and notify, in writing, such owners or occupiers who are found breaching the by-law.
2. If an owner or occupier continues to breach a non-smoking by-law, a strata company may serve a notice for breach of a by-law on the owner demanding payment of the prescribed penalty, if any.
3. The *Strata Titles Act 1985 (WA)* and Regulations do not provide any prescribed form for a breach notice. A strata company may consider inserting details of the date, place and time of the breach in a breach notice to substantiate any claim in any future enforcement action it may be required to undertake.
4. Any correspondence to an owner or occupier relating to a breach of the new by-law must be signed by a person duly authorised by a Strata Company to sign on its behalf.
5. A Strata Company should retain records of any correspondence sent to an owner or received from such owner in relation to this issue as evidence for any future action, which may be required to be undertaken.
6. If the owner or occupier fails to pay the prescribed penalty, Strata Companies may enforce a non-smoking by-law by commencing proceedings before the Tribunal.³⁶
7. Importantly, before making an application to the Tribunal, a strata company must have complied with any procedure for dispute resolution (if any) contained in the by-laws of the Strata Company.
8. In any application before the Tribunal, the strata company may seek orders that an owner pay:
 - a) the prescribed penalty if the non-smoking by-law specifies a penalty for its breach; and
 - b) the costs of making the application.³⁷
9. The Tribunal will make orders for payment of penalty if ³⁸:
 - a) the by-law specifies a penalty for breach of it;
 - b) the Strata Company has authorised making the application to the Tribunal; and
 - c) the owner has willfully and persistently breached the by-law.
10. The Tribunal will serve a copy of any orders made by it on the Strata Company and the owner.³⁹

³⁵ Section 3B(5)

³⁶ Section 42(4) of STA.

³⁷ Section 35 of STA.

³⁸ Section 103(2) of STA.

³⁹ Section 103(3) of STA.

11. If an owner fails to pay monies to a strata company pursuant to the Tribunal's order, the Strata Company may enforce the order by filing, in the court of competent jurisdiction ⁴⁰:
 - a) a true copy of the order; and
 - b) a person's affidavit stating that the monies have not been paid under the order.

12. The Court to enforce the order depends on the value of the dispute. For example, for disputes below \$75,000 it is the Magistrates Court WA.

Owners need to be mindful that credit rating companies in Australia maintain records of people who are listed as debtors by the Magistrates Court. If a strata company files enforcement proceedings against an owner in the Magistrates Court, the credit rating of the owner is likely to be adversely affected.

When making an application to the Tribunal, a strata company is required to provide the following documents to the Tribunal:

1. A recent copy (search) (not older than 10 days) of the whole of the relevant strata plan or survey-strata plan, which is obtainable from the Western Australian Land Information Authority (Landgate);
2. A copy (search) of each "notification" that is registered on the strata plan or survey-strata plan, which is obtainable from Landgate;
3. Evidence that the application to the Tribunal was authorised at a meeting of the council of the strata company, or at a general meeting of the members of the Strata Company; and
4. All other evidence which substantiates the claims by a Strata Company.

It is important for strata companies to understand that the Tribunal will make orders for any owner to pay a penalty only if he or she has 'wilfully and persistently' breached the by-law. An owner or occupier will be held to be wilfully and persistently breaching a by-law if a strata company notifies him or her of its concerns relating to breach of the by-law and, he or she fails to comply with that by-law. ⁴¹

Therefore, Strata Companies need to gather and provide evidence, which demonstrates that an owner or occupier was aware of the new non-smoking by-law and on more than one occasion he acted in a manner that will amount to a breach of the by-law. Some examples of the evidence, which will assist the strata companies in substantiating its claim are:

- a) A copy of the new non-smoking by-law;
- b) Copies of correspondence sent to all owners notifying them of the new by-law;
- c) Copies of any correspondence sent to the owner or occupier notifying him of the breach;
- d) Copies of any correspondence received from the owner; and
- e) Photographs of any signage erected on the strata property.

⁴⁰ Section 85 of STA.

⁴¹ The Owners of Freshwater Strata Plan 634548 and Chen [2017] WASAT 120.