

Question: Can the Body Corporate enter a lot pursuant to a by-law?

Answer: The power of a body corporate to enter a lot is contained in s.163 of the *Body Corporate and Community Management Act 1997* ('Act').

No.

The power of a body corporate to enter a lot is contained in **s.163** of the *Body Corporate and Community Management Act 1997* ('Act').

Pursuant to s.163(2) of the Act, unless in an emergency, the body corporate must provide the owner/occupier of a lot with 7 days written notice of their intention to enter their lot. The owner/occupier is prohibited from obstructing a person from entering the lot where a valid notice has been issued (s.163(5) of the Act).

A by-law that is inconsistent with the Act (i.e. the by-law permits the body corporate to enter a lot without providing the required notice) will be invalid to the extent of the inconsistency (s.180 of the Act).

For example, in *Tea Trees* [2017] QBCCMCmr 60 (10 February 2017) the adjudicator relevantly stated:

"[93] The body corporate has a right to enter a lot under powers contained in section 163 of the Act. The by-law appears to override the provision of section 163 of the Act..."

[94] For the reasons given I find that By-law 12 is unreasonable to the extent it purports to override the provisions of section 163 of the Act regarding rights of entry and is therefore invalid."

We have seen many committee members, with a lack of understanding of the legislation but good intentions, enter a lot in reliance on invalid by-laws. Given the seriousness of entering a lot without the requisite approval, it is our position that these types of by-laws should be removed, which requires a special resolution at a general meeting and the registration of a new community management statement.

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