

Ban the banners

New covenant and body corporate by-law rules

Sustainable housing laws.

The facts

For the greener good.

Since 1 January 2010, new and some existing covenants and body corporate by-laws have been prevented from banning energy efficient features or fixtures and requiring certain design elements in houses, townhouses, units or enclosed garages. The law on these issues was further amended on 23 May 2010.

What is a covenant?

Developers commonly use covenants in the contracts of sale, by-laws or community title schemes to control home designs in residential estates and unit complexes.

Covenants and by-laws can restrict or prohibit the use of energy efficient or sustainable building features and initial buyers are typically required to pass on these requirements to later buyers.

Why was the 'ban the banners' provisions introduced?

The 'ban the banners' initiatives assist Queenslanders in reducing their carbon footprint by allowing home owners and builders to choose sustainable building features and designs.

These laws impact positively on housing affordability by allowing owners to choose home sizes and materials that suit their needs. Sustainable features, such as solar hot water systems and light coloured roofs, also help reduce ongoing operational energy costs.

What design features are protected under 'ban the banners'?

It needs to be considered whether the covenant or by-law was made from 1 January 2010 to 22 May 2010, or alternatively, some time after 22 May 2010.

Covenants and by-laws made from 1 January 2010 to 22 May 2010, cannot restrict the use of:

- light roof colours
- energy efficient windows or window treatments
- specific types of materials and finishes for external walls and roofs.

Further, they cannot require:

- minimum floor areas
- a minimum number of bedrooms or bathrooms
- more than one garage
- orientation of a house in a particular way
- minimum roof pitches.

Covenants and by-laws made after 22 May 2010, cannot restrict the use of:

- light roof colours
- energy efficient windows or window treatments.

Further, they cannot require:

- minimum floor areas, but a minimum frontage is allowed unless it results in a less energy efficient house
- a minimum number of bedrooms or bathrooms
- orientation of a house in a particular way if that orientation would result in a less energy efficient house.

Solar hot water systems and photovoltaic cells

The amendments in May 2010 made no change regarding solar hot water systems or photovoltaic cells. A by-law or covenant cannot prohibit or restrict the installation of a solar hot water system or photovoltaic cells merely for the purposes of preserving the external appearance of a building. This applies to by-laws and covenants made prior to 1 January 2010 as well as on, or after that date.

Landscaping, fencing and driveways

For covenants and by-laws made from 1 January 2010 to 22 May 2010, the Act prohibits covenants and by-laws from requiring driveways, fencing or landscaping to be in place before occupation. It also prohibits completion timeframes for construction of a house, landscaping, fencing or driveways.

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From 23 May 2010, covenants and by-laws relating to landscaping, fencing and driveways are permitted.

What design features may still be restricted?

Covenants and by-laws may in some circumstances lawfully place a restriction. For example:

- A proposed roof colour may be considered to be too reflective because the glare would cause nuisance to an adjoining lot owner. In this case, a less reflective light colour or finish may be lawfully required.
- The selection of an energy efficient window treatment might lawfully be restricted if the treatment has a mirror finish and reflects sunlight into other lots.
- A solar hot water system at a particular location on a roof might also be lawfully restricted to maximise available space for the installation of other solar hot water systems. Furthermore, the type of solar hot water system may be restricted where the roof would not support a system with a roof storage tank.

How do the new laws apply?

All covenants and by-laws made before 1 January 2010, will remain unaffected by the legislation, except in relation to solar hot water systems and photovoltaic cells. The law relating to solar hot water systems and photovoltaic cells apply to all covenants and by-laws regardless of when the covenant or by-law took effect. All covenants and by-laws made from 1 January 2010 to 22 May 2010, will be covered by the original legislation in its unamended form. All covenants and by-laws made on or after 23 May 2010, will be covered by the legislation in its amended form.

How do I know if there is a covenant or body corporate by-law in place?

The existence of a covenant or by-law will usually be identified by checking contract terms or by appropriate searches of by-laws. These checks and searches will usually be conducted by a solicitor acting for the purchaser.

Will the new laws override local planning schemes?

The new laws only prohibit covenants and by-laws from banning identified design and energy efficient features. The new laws do not override local government planning schemes which may require minimum standards to meet the community's expectation for residential areas. For example, planning schemes can prohibit the occupation of a caravan or shed for residential purposes.

It is recommended that you check with your local council about any planning restrictions that may be in place for your property.

Can my neighbours build any size home and use any material?

As a minimum, the Building Code of Australia requires a house to have a kitchen, bathroom, toilet and laundry. These standards place practical limits on how small a home can be.

Also, the building must still comply with the performance requirements of the Building Code of Australia and any local government planning scheme requirements such as visual amenity or streetscape requirements.

For more information

For further information, refer to the Department of Infrastructure and Planning's website www.dip.qld.gov.au



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