

What Lot Owners Should Know About Retention Of Records

Owners corporations and their strata committees may find almost overwhelming questions like “what records do I need to keep”, “how should I keep them” and “how long do I need to keep them”. Although greater regulation has increased the variety of records which must be retained, developments in technology and associated law do make this an easier task.

There are many Commonwealth and State laws which regulate document retention, with enormous variation as to how and how long such records must be kept. However, laws like the Electronic Transactions Act 1999 (Cth) and the Electronic Transactions Act 2000 (NSW) provide that most documents may be retained electronically.

There are exceptions, e.g. some documents relating to court proceedings or relating to interests in land. There are also some technical issues, e.g. the potential need to prove when a document was made and that it has not been altered, which could be very important if the document is ever required for court proceedings.

The main document categories and how best to deal with them are set out below:

- **Owners Corporation records held by Strata Managing Agent** - These may be the owners corporation’s property and be protected by law, as well as by express and implied contractual terms. An agent should return these records to the owners corporation when no longer required, retaining an electronic copy. The records should not be destroyed without the owners corporation's consent.
- **Title & registration documents** - Documents evidencing title to property and associated rights, such as title deeds, certificates or registrations, should be retained indefinitely as originals. This includes related documents such as deeds and contracts. Most of these documents need not be kept as originals, but many of them do, so it is prudent to retain them all indefinitely as originals.
- **Statutory Records** - There are many statutory provisions which require that particular documents be retained. In the case of owners corporations, the most important are contained in Parts 5 and 10 of the *Strata Schemes Management Act 2015*. The range of documents covered is broad enough that owners corporations should probably retain all documents in order to ensure compliance. Section 180 provides that they must be retained for 7 years. However, Section 176 provides that they may be retained in electronic form.
- **Employment Records** – These are regulated by various acts, including the Fair Work Act 2009. These records include those relating to such as employment status, hours worked, salary/wages, leave and superannuation and must be kept for 7 years.
- **Accounting and Tax Records** - these are regulated by various acts, e.g. the legislation dealing with income tax, payroll tax, capital gains tax, goods and services tax and fringe benefits tax. These must be retained for 7 years.

- **Documents required for commercial purposes** – Many documents forming part of an owners corporation’s records will be required for commercial purposes, potentially long after they were prepared. Examples include documents required for engaging contractors to carry out works, engaging consultants to provide advice, arranging insurance or for audits. Such records should be retained indefinitely, in electronic form.
- **Documents required for litigation purposes** - Many documents may be required for the purpose of litigation and these should be retained, at least electronically. However, there are some special cases:
 - Documents filed in court generally must be retained as originals, at least until the proceedings and any possible appeals are concluded.
 - Documents which may be required for current or anticipated proceedings should not be destroyed and should be retained for as long as proceedings are current or anticipated. If they are helpful, you may need them. If they are unhelpful, you may be exposed to penalties for not retaining them.

Statutory limitation periods, i.e. periods within which proceedings must be brought, may not apply and in any case can be lengthy, so such records may need to be retained indefinitely.

- **Documents containing personal information** – These may be subject to privacy law obligations and should only be retained for so long as there is a legitimate purpose in retaining them.

For further information please refer to the following article:

[Retention of Business Records](#)

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