

Owners Corporations – Getting Access to Your Records

There seems to be a common misconception that an owners corporation requires permission from its strata managing agent to access the strata roll and other records maintained for it by its agent. That access is often denied, frequently citing privacy law concerns. This is a misconception, because these are the owners corporation's own records and it is entitled to them under various legal principles.

In particular:

- The general principle under agency law is that documents created or held by agents in that capacity are the property of the principal, in this case the owners corporation. Although this would be subject to any contrary provision in the agency agreement, such a provision would be unusual and is not contained in the most commonly used templates.
- Failure by an agent to provide access may constitute a breach of the agency agreement, the agent's associated fiduciary duties or give rise to a cause of action in tort, e.g. conversion or detinue. In other words, the owners corporation may be able to sue the agent and hold the agent liable for any loss suffered by the owners corporation.
- Owners corporations also have powers under Section 181 of the Strata Schemes Management Act 2015 ("SSMA"), which provides in effect that a strata committee can give notice to a person in possession or control of property (including records) of the owners corporation requiring the person to deliver the property to a specified strata committee member, non-compliance being an offence.
- Further, failure to provide access may constitute a "failure to account", justifying appointment of a manager or receiver under Part 9 of the Property Stock and Business Agents Act 2002 or action of a type justifying disciplinary action under Part 12 of that act.
- These rights, including under section 181 of the SSMA, are subject to any claim or lien which the agent may have in relation to the records. However, whether an agent has a lien at all, which records it applies to and whether it negates rights under section 181 are all complex questions requiring further legal advice if a lien is asserted.

An inspection under Section 182 of the SSMA is not required. That is a procedure available to third parties, e.g. lot owners and is not required by an owners corporation, which is after all seeking access to its own documents, for which it requires no authority.

The privacy laws do not prevent an agent from disclosing, to its principal, information collected or held on behalf of its principal. In fact, the privacy legislation permits personal information to be collected, held, used or disclosed if required or authorised by law. The collection/access in issue is required by various provisions of the ("SSMA"). In other words, there is no sound basis for an agent to claim privacy concerns as a basis for withholding access.

Another common claim by agents, which is also incorrect, is that the relevant records are the agent's own business records. Records prepared solely for the agent's own use may be excluded, but the strata roll and other documents normally sought by an owners corporation do not fall into that category.

Accordingly, owners corporations should not feel frustrated by such situations, as there is a great deal which they can do if denied access to their records.

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