Can I use that Document too? – Not without Copyright

One great way to incur a large debt is to reuse a commercial document without the consent of the copyright owner. We see this regularly and it rarely ends well.

In a strata context, the most common scenario involves a professional being engaged to prepare a document for an owners corporation or lot owner and those persons or others reusing the document for a similar transaction in the future, without the consent of the professional. Such persons may well find themselves on the wrong end of legal proceedings, possibly incurring substantial legal costs and being required to make a substantial compensation payment to the professional.

Key considerations here:

- This issue spans across a wide range of professional engagements and could include a lawyer engaged to prepare a contract, by-law or other legal document, an expert engaged to prepare a report, an architect engaged to prepare drawings or a graphic designer engaged to prepare artwork. All of these and a wide range of other professionals may have copyright in the works they create.

- At the time of engagement of a professional, there is an opportunity to negotiate the extent of the client's right to use the work created. Barring a contrary agreement, the general rule is that a professional engaged for a fee to create copyright materials retains copyright, with the client having an implied license to use the work for the purpose for which it was created.

- For example, if a lot owner engages a solicitor to prepare a by-law, the solicitor will retain copyright in the template by-law and the client will have an implied license to use it for the intended purpose, being to procure that the owners corporation make a by-law in that form. This would extend to ancillary activities such as circulating an agenda, recording minutes and registering the by-law made. It would not extend to making further by-laws in the future without the solicitor's agreement.

- A professional whose copyright has been infringed may demand compensation and corrective action, such as an undertaking not to further infringe the copyright. Failing that, the professional may feel compelled to commence proceedings to protect his or her copyright, which can be a very expensive exercise for the other party.

If you would like to reuse a copyright document which you do not have permission to use, your best and cheapest option will generally be to contact the copyright owner and try to work out an arrangement.

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We have considerable experience with these issues and could help you manage difficulties in this area. For further information or assistance in this area please contact us at enquiries@bannermans.com.au or on 02 9929 0226.

Key takeaways

- Reusing a commercial document without consent can lead to significant legal consequences.
- Professionals retain copyright of the documents they create unless otherwise agreed.
- Clients have an implied license to use documents for their intended purpose, but not for future uses without permission.
- Negotiating usage rights at the time of engagement is crucial to avoid copyright infringement.
- Contacting the copyright owner is the best approach for reusing documents without permission.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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