



Your **STRATA**
PROPERTY
WEBINAR



Bulletproof Books and Records

Pro Member Webinar

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One building's mistake...

- Large scheme
- One owner, many access requests
- 2012 to...now
- Tribunal proceedings
- Over \$10,000 in legal fees
- Barrister's advice ✓





Others' many and repeated mistakes...

1. Poor file management and storage
2. Not saving emails to client files
3. Not giving proper access to records



The \$10,000+ legal advice

I am asked to advise on the limits, if any, of the owners' corporation's obligations in response to such requests and the strategies which the owners' corporation may take to protect itself from litigation founded on an allegation that it has not complied with those obligations.



The Law

- Section 182, Strata Schemes Management Act
- Section 183
- Section 188 (the remedy)
- Regulations 22, 23, 24

Some observations on these provisions

16. Unfortunately, as will be seen, it appears that Part 10, Division 2 (at least) was drafted by someone who had been sacked as a copy boy at the *Daily Telegraph* and then answered an advertisement for a Parliamentary draftsman. (The enacted terms of



182 REQUESTS FOR INSPECTION OF RECORDS OF [OWNERS CORPORATION](#)

- (1) Persons who may inspect An [owner](#), [mortgagee](#) or [covenant chargee](#) of a lot in a [strata scheme](#), or a person authorised by the [owner](#), [mortgagee](#) or [covenant chargee](#), may request the [owners corporation](#) to allow an inspection to be carried out under this section.
- (2) Form of request The request must be made by written notice given to the [owners corporation](#) and be accompanied by the fee prescribed by the regulations.
- (3) Items to be made available for inspection The [owners corporation](#) must make the following items available for inspection by the person who makes the request or the person's agent--
- (a) the [strata roll](#),
 - (b) any other records or documents required to be kept under this Part,
 - (c) the plans, specifications, certificates, diagrams and other documents required to be delivered to the [owners corporation](#) before its first annual general meeting by the [original owner](#) or the [lessor](#) of a [leasehold strata scheme](#),
 - (e) any applicable 10-year [capital works fund](#) plan,
 - (f) the last [financial statements](#) prepared,
 - (g) every current policy of insurance taken out by the [owners corporation](#) and the receipt for the premium last paid for each such policy,
 - (h) if a [strata managing agent](#) has been appointed, a copy of the instrument of appointment,
 - (i) if a strata renewal plan has been given to [owners](#) for their consideration under Part 10 of the [Strata Schemes Development Act 2015](#), a copy of the plan,
 - (j) any other record or document in the custody or under the control of the [owners corporation](#),
 - (k) if the duties of the [owners corporation](#) under this subsection have been delegated to a [strata managing agent](#), any other records (including records of the [strata managing agent](#)) relating to the [strata scheme](#) that are prescribed by the regulations,
 - (l) if a [building manager agreement](#) is in force or has been entered into but has not yet commenced, a copy of the [building manager agreement](#),
 - (m) particulars of any service agreement entered into by the [owners corporation](#),
 - (n) particulars of any agreement entered into with a [local council](#) for a strata parking area,
 - (o) if the request is made within 5 years after the end of the [initial period](#), particulars of any orders made under [section 27](#) and copies of any related contracts or other documents.

: Maximum penalty--5 penalty units.

183 INSPECTION OF [OWNERS CORPORATION](#) DOCUMENTS

(1) An inspection under this Division is to take place at the time and place, or by the means, agreed on and, failing agreement, at the [parcel](#) at a time and on a date, or by the means, fixed by the [owners corporation](#) under this section.

(2) If an applicant and the [owners corporation](#) fail to reach an agreement within 3 days after the [owners corporation](#) receives the application, the [owners corporation](#) must immediately give the applicant a written notice fixing a specified time (between 9 am and 8 pm) on a specified date (not later than 10 days after the [owners corporation](#) receives the application), or a specified means, for the inspection to take place.

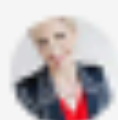
(3) The means for inspecting documents may be in person or through electronic access to the documents or any other means agreed on or fixed under this section.

(4) A person entitled to inspect a document may take extracts from, or make a copy of, the document but must not, without the consent of the [owners corporation](#), remove the document from the custody of the [owners corporation](#).



Miss

14M



Amanda_Farmer:



Yes, I agree it's supposed to be a two-step process but there's nothing stopping the OC ignoring you for 3 days from receipt of the application, then proposing their one date and time.

The section says "if you fail to agree" not that you have to "try" or "take steps to" agree. The latter would be a helpful amendment.

Amanda.



Thanks for that Amanda, It IS indeed a two step process. Although i'd said if the OC/SM alleges they 'failed' to agree because they, the OC/SM did nothing - eg "failed" proactively and willfully 'failing' which i'd suggest is open to interpretation. Therefore in our building you get one day and time to do your strata search - if you can't do that day or time - that's the end of it - you have to apply again . . . and that keeps going round. Surely that's not right? As i understand in contract law etc, an agreement takes BOTH parties to participate. Surely this is the same - you can't have an agreement or fail to have an agreement by yourself. thanks as ever



Question 1

“Can the Owners Corporation refuse a request if it is not accompanied by the fee?”

Answer:

YES



Question 2

“Can the Owners Corporation terminate an inspection if the period of time paid for in advance expires?”

Answer:

YES



Question 3

“Can the Owners Corporation refuse a second or further request to inspect records or documents previously made available for inspection?”

Answer:

NO



Question 4

“Can the Owners Corporation refuse to make records or documents available for inspection if they have not been identified with sufficient particularity in the request?”

Answer:

NO



Question 5

“Must the Owners Corporation make an item available for inspection even if it does not have custody or control of it, if the relevant provision does not expressly make custody or control a condition precedent?”

Answer:

NO



Question 6

“Must the Owners Corporation give access to its electronic records if the same information is made available on paper?”

Answer:

NO



Question 7

“Must the Owners Corporation make the private communications among its strata committee members available for inspection?”

Answer:

NO





Handy Tribunal Cases

Walker v The Owners - Strata Plan No. 1992 [2020] NSWCATAP 192 (16 September 2020)

- Tribunal got it wrong, at first
- Self represented lot owner
- Levy register is a document that must be kept and is a record that must be made available
- “The legislation permits inspection of the levy register and to that extent, Parliament has indicated that information contained in the levy register is not protected by considerations of privacy.”



Handy Tribunal Cases

Legge v Network Strata Services Pty Ltd [2013] NSWCTTT 45 (8 January 2013)

- Request for the strata roll
- A lot owner can request, inspect and copy the Owners Corporation's strata roll, which includes the names of lot owners and their address for service (also email address...)
- The argument that addresses of lot owners cannot be disclosed because of "National Privacy Principles" was found to be 'misconceived. Disclosure is required by the SSMA



What about privileged documents?

Eastmark Holdings Pty Limited v Kabraji (No 3) 2012 NSWSC 1463

- What is privileged?
- Confidential communications between a person and his, her or its lawyer, made for the dominant purpose of giving or obtaining legal advice or the provision of legal service.
- Documents were not privileged just because the OC and the defendant were now in dispute. At the time the advice was created, the parties were not adversaries.



Your Framework for Bulletproof Books and Records

1. Consistent and accessible records management
2. Ensure ease of access to **EVERYTHING**
3. It's not straightforward: get advice on the tricky requests



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