

# 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.

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](mailto:enquiries@bannermans.com.au) or on 02 9929 0226.

**Prepared by Bannermans Lawyers**  
**20 May 2021**



T: (02) 9929 0226      M: 0403 738 996      ABN: 61 649 876 437  
E: [dbannerman@bannermans.com.au](mailto:dbannerman@bannermans.com.au)      W: [www.bannermans.com.au](http://www.bannermans.com.au)  
P: PO Box 514      NORTH SYDNEY NSW 2059      AUSTRALIA