

STRATA, SECURITY CAMERAS AND LESSON FOR OWNERS CORPORATIONS

What Rights do Owners Corporations and Lot Owners have to install Security Cameras?
'NOTHING TO SEE HERE' OWNERS CORPORATIONS, LOT OWNERS AND SECURITY
CAMERAS



The use of surveillance cameras in both private and public spaces is increasing significantly. Cameras are installed by local councils and private enterprise, and you can expect to be digitally recorded walking into a shopping centre, travelling on public transport, and even taking the dog for a walk in a local park. An often vexed issue is what rights lot owners and owners corporations have to install their own security cameras. Two recent NCAT decisions confirm that lot owners generally do not have the right to install

security cameras on common property without first obtaining the consent of the owners corporation. Where they do not obtain that consent, then the owners corporation is entitled to require the security cameras to be removed. However, there are also lessons for owners corporations, with the possibility that owners corporations and lot owners may commit an offence under the Surveillance Devices Act 2007 (NSW).

The First Case

A Couple of Cameras Background In mid-2018, the lot owner moved back into a unit owned by her and which had been let to tenants. Due to her concerns about a level of “dispute” within the strata scheme, the lot owner installed 2 security cameras on the (common property) building – 1 outside the main bedroom of her unit, and 1 outside the kitchen. The security cameras were motion-activated and recorded footage which was then stored on a hard drive. This action by the lot owner, without the consent of the owners corporation, was the source of some unhappiness among other owners. Initially, the owners corporation instructed the strata manager to contact the lot owner. The purpose of such contact was to advise the lot owner that the owners corporation was not happy with the cameras being installed. Shortly afterwards, the strata manager again contacted the lot owner advising her that she would need specific permission from the owners corporation to attach the security cameras to common property walls. There was no response from the lot owner and the owners corporation served a Notice to Comply on her. Still, there was no action from the lot owner. Finally, the owners corporation gave the lot owner a deadline and indicated that if the lot owner did not remove the security cameras by that deadline then the owners corporation would take its own steps to do so. The lot owner then commenced proceedings in the NSW Civil and Administrative Tribunal (NCAT) and obtained interim orders restraining the owners corporation from removing the security cameras pending the ultimate hearing of the matter. However, following that hearing, the original interim orders were revoked by the Tribunal, and orders were made for the removal of the cameras. The decision of the Tribunal followed a fairly orthodox line of reasoning. **Need for Approval to Use Common Property** The Tribunal referred to By-Law 5 of the strata scheme which stated: “(1) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation. (2) An approval given by the owners corporation under clause (1) cannot authorise any additions to the common property.” The lot owner in this situation had not obtained consent. Since no consent had been obtained, the Tribunal had no difficulty in ordering that the security cameras be removed. **Surveillance Devices Act** The Tribunal also brought to the attention of the lot owner that in recording footage of persons outside of her lot, the lot owner was likely to be in breach of section 8 of the Surveillance Devices Act. The Tribunal noted that a breach of section 8 of the Surveillance Devices Act was punishable by a significant fine or imprisonment.

The Second Case

Half a Dozen Cameras! Background In another decision handed down recently, the Tribunal was once again required to consider circumstances where a lot owner had installed multiple security cameras on common property walls. In this case, the lot owner had installed: ▪ 3 CCTV cameras facing the backyard; ▪ 1 CCTV camera facing the main entry door of her lot; ▪ 1 CCTV camera facing her garage door and parking spots; and ▪ 1 CCTV camera facing the common property driveway containing the rubbish bins. The lot owner did not obtain the consent of the owners corporation to the installation of any of these cameras.

Failure to Comply with By-Law As with the case referred to above, the owners corporation drew to the attention of the Tribunal one of its by-laws, being Special By-Law No. 3, which stated: “An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, install, use or maintain an optical or audio surveillance device on their lot, or on common property in order to record visually or aurally, or observe or listen to the carrying on of an activity.” In light of the failure of the lot owner to obtain the owners corporation’s approval, here the Tribunal made an order that if the lot owner did not remove the security cameras herself, that the owners corporation was entitled to do so, at the lot owner’s cost. In this case, the Tribunal again referred to the potential application of section 8 of the Surveillance Devices Act, and the risk that the lot owner placed herself in, in recording footage.

Lessons for Owners Corporations Almost every owners corporation will have a by-law or by-laws which will be able to prevent a lot owner from installing CCTV cameras on common property without the consent of the owners corporation, and owners corporations should not hesitate to require lot owners to comply by either obtaining consent from the owners corporation or removing CCTV cameras which have been installed without consent. It is also timely for strata managers to bring to the attention of owners corporations the potential difficulties for individuals and for corporations under the Surveillance Devices Act, and the need to take great care when it comes to the installation of surveillance devices. If owners corporations take the step of initiating security cameras themselves, they risk committing an offence pursuant to the Surveillance Devices Act.

5 TIPS FOR YOUR INSURANCE



Your owners corporation fees include insurance so that covers you, right? Wrong. Here are 5 tips to help you stay ahead.



1. Understand your risks

Becoming a landlord can be an exciting stage of life but landlords face a series of risks including

- Accidental damage to contents you own like lighting, carpets and kitchen appliances
- Malicious damage by tenants or even burglars
- Damage from fire, floods and storms
- Loss of rent while the apartment is being fixed
- Legal liability for injury in your apartment

Landlord insurance is designed to cover your risks.



2. There are savings in strata

Some landlord insurance is designed for houses so you can end up paying for things you don't need. A good way to spot this type of policy is wording like "Building insurance for landlords" – your building is normally covered by strata insurance so you don't need this!

A better way is to have a landlord policy specially designed for strata from companies like CRM Brokers. A good landlord policy for strata will start where the strata insurance stops so you get value for money.

3. Airbnb cover

This might sound obvious but short term rental is growing in popularity. It is worth checking that it is covered by your landlord insurance.

You may not be planning for short term rental now but the rental market changes and it's simpler to have it covered in your landlord insurance. Flexibility rules!



4. NSW Laws

NSW laws tend to favour tenants. And there is no sign of that changing any time soon. Sometimes we focus so much on laws that we forget that NSW landlords can still have very positive results! Landlord insurance covers some of your risks and helps you operate in contemporary NSW.

5. Why Did you decide to be a landlord?

It wasn't because you wanted more headaches, was it? When you think that landlord insurance is really covering your financial results, it is so worth it.

What is the value of peace of mind? **Priceless.**

Contact your strata manager and we will obtain an obligation free quote.

STRATA COMMITTEE MEETINGS

A decision at a strata committee meeting is considered a decision of the owners corporation. A fundamental change in the new strata legislation ([Strata Schemes Management Act 2015](#)) in the running of strata committee meetings is that the committee member must be financial to vote.



Convening a meeting

Options to convene a strata committee meeting:

- the standard last motion on our committee notice is to set a date and time for the next meeting
- the secretary may convene a meeting
- 1/3 of committee members can request a meeting, and the meeting is to be held not later than 14 days after the request (28 days if it is a large scheme)

Quorum

A motion on the notice of the strata committee meeting must not be considered unless there is a quorum present to consider and vote on the motion. A quorum is present at a meeting when:

- (a) in the case of a strata committee which has only one member, if the member is present;
- (b) in any other case, if not less than one-half of the persons entitled to vote on the motion are present.

A person who has voted, or intends to vote by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum. A member with the consent of the strata committee may appoint an owner or eligible company nominee, to act in his or her role at any meeting of the strata committee. A person can be appointed even if they are already a member of the committee. If your scheme has tenancy notices for more than half the lots in the scheme, then there should be a tenant representative. This person cannot be counted in determining the quorum.

Eligibility to vote

A committee member cannot vote if the contributions for their lot have not been paid, or if

they were nominated for the strata committee by an owner who has not paid the contributions for their lot. The key is whether or not the owner of the lot was an un-financial at the date notice of the meeting and did not pay before the meeting. Tenant representatives cannot vote.

Disclosures of pecuniary interest

If you have any pecuniary interest in a motion, then the nature of the interest must be disclosed at a meeting AND the particulars are to be kept in a book for this purpose. A member with a pecuniary interest on a particular matter cannot vote on a motion relating to that matter.

Motions decided

Motions are decided by majority and declared by the chairperson at the meeting. A motion is valid if proper notice is given and each committee member received the motion. If before the meeting, notice is given to the secretary by owners whose unit of entitlement is greater than one third, that the specified owners are opposed to the decision.

THE ROLES OF THE OFFICE BEARERS



The Chairperson

The chairperson presides at general meetings and strata committee meetings and determines quorums and procedural matters at those meetings. The chairperson does not

have a casting vote. Procedural matters include:

- The declaration of the result of voting by the chairperson is required and conclusive
- Ruling a motion out of order



The Secretary

The following functions of the secretary are delegated to the strata managing agent

- Maintain the strata roll
- Convene meetings of the committee and the owners corporation
- Provide notices of meetings and other matters
- Provide minutes of meetings
- Enable inspections of books and records
- Answer communications addressed to the owners corporation

If the secretary believes on reasonable grounds that an offence has or is being committed under the Act then there are investigative powers they can exercise, and they can be accompanied by another committee member, a building manager, or the strata manager.

The new laws also enable the secretary to conduct investigations and research, to attempt to resolve complaints and disputes, and to provide of owner corporation information to relevant parties.



The Treasurer

The following are considered general functions of the treasurer which are delegated to the strata managing agent

- Sending levy notices
- Receipting, banking and recording moneys paid to the owners corporation
- Provide the strata information certificate (relating to the sale of a lot)
- Keeping accounting records and preparing financial statements

Integrity Strata recommends a motion be put to the owners corporation to delegate authority to the treasurer to place investments of the trust funds.

Disclosure

It is vital to disclose a connection to the original owner for election to the strata committee. The disclosure must be made at the AGM before the election and is to be recorded in the minutes of the AGM. A connected person to the original owner is:

- (a) a relative of the principal or holder of an executive position (director, manager or secretary of the corporation)
- (b) a person employed or engaged or a business partner of the original owner
- (c) the employer of the original owner
- (d) any connection or association.

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Geoff & Vicki Meehan (Directors)

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HOMESTEAD

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For more information contact the following:

Paul - 0499 988 394

Craig - 0414 505 365

Geoff - 0414 453 986

Office - 02 4283 5797

Welcome to All Trade Services Illawarra

All Trades Services Illawarra provides a maintenance management service for strata management and real estate agents from Helensburgh in the north to Ulladulla down south. All Trades Services Illawarra work with you and your clients to provide the best service, tradesmen and quality of work assuring you and your clients have a hassle-free experience while we maintain your properties.



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For more information:

Contact: 0431 147 746

Website: www.alltradesillawarra.com.au



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STRATA INSURANCE

CRM Brokers' Strata division engages specialist strata brokers whose main function is to deal solely with all things strata. Our in-house Claims team ensures we provide accurate assessments when discussing claims and potential issues with insurers.

We are mindful of the fact that the Owners Corporations' premium is one of the major expenses for strata, however, this should not be isolated as a sole factor when considering the placement of cover with an insurer. The importance of having claims paid when most needed; i.e. the speed at which a claim is assessed and approved; the policy wording to accompany a claim, are additional factors that must be taken into account during the broking process.

Loz Electrical is licenced and insured to carry out Electrical, Security & Air Conditioning work, servicing areas from South Sydney to Huskisson. Our diversity in the industry allows us to be your one-stop-shop.



Contact Peter - Loz Electrical
Phone: 0414794753
Email: peter@lozelectrical.com.au



LOZ ELECTRICAL

Loz Electrical holds a current Master Licence in Security which permits us to carry out all aspects of security installations.

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- TV
- Air Conditioning

Security Alarms

- CCTV
- Intercom Systems (House and Apartments)

Contact Peter - Loz Electrical

Phone: 0414 794 753

Email: peter@lozelectrical.com.au



Our Team

OUR STAFF:

Leo Paternoster	Director	leo@integritystrata.com
David Paternoster	General manager	davidp@integritystrata.com

NOWRA:

Managers

Narell Whitehead	Licensed Strata Manager	narell@integritystrata.com
Tamara Warfield	Licensed Strata Manager	tamara@integritystrata.com
Claire Clarke	Trainee Strata Manager	claire@integritystrata.com
Robyn Gould	Administrative Assistant to Strata Managers	

WOLLONGONG:

Kellie Rickwood	Licensed Strata Manager	kellie@integritystrata.com
Debbie Kominkovski	Licensed Strata Manager	debbie@integritystrata.com
Luanne Martins	Licensed Strata Manager	luanne@integritystrata.com
Amelia Knott	Trainee Strata Manager	amelia@integritystrata.com

Personal Assistants/Administrative Staff

Donna Morice	PA to David Paternoster	donna@integritystrata.com
Charley Shepstone	PA to Debbie Kominkovski	charley@integritystrata.com
Lynette Green	PA to Luanne Martins	lynette@integritystrata.com

WOLLONGONG 0242294699 AND NOWRA 0244 235 028 | WEBSITE:WWW.INTEGRITYSTRATA.COM

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