

## STORING EQUIPMENT ON COMMON PROPERTY IN NSW

One essential but sometimes overlooked component of a Management Rights business is having a place to store your caretaking equipment. Most strata schemes will have an area designated for storage on the common property that the manager is generally allowed to use. This could range from small areas like a cupboard under the stairs, through to large maintenance rooms and storage sheds. Making sure you have a legal right to use and keep these areas secure is important. A handshake with the chairperson is not enough. Without legal rights approved by the Owners Corporation at a general meeting, the manager can be forced to remove equipment from the common property or even need to share the areas with other owners and occupiers.

Ideally your business should have documented exclusive use of every area you need to operate your business, at all times. This view is shared by most banks and ensuring there is a secure and transferable right to use all storage areas needed for the business is a consideration for the banks when deciding whether to offer finance. If you are planning to sell your business and you don't have a properly documented approval from the Owners Corporation that allows you to use the common property storage areas, it could create significant delays and costs for your sale.

In New South Wales, the Owners Corporation can grant a lease or licence to use part of the common property by passing a special resolution (~75% approval). This means that the strata committee acting on its own does not have sufficient authority to grant the manager a right to use the common property for storage. Also note that it takes a special resolution at a general meeting to vary a lease over common property once it has been created. If you are currently using common property areas for storage and you don't have a lease or licence granted by the Owners Corporation at a general meeting, the sooner you start fixing that the better.

Although it is possible to include a licence in a Building Manager Agreement, it also means that Owners Corporation approval for the agreement will require the passing of a special resolution instead of only needing a simple majority at a general meeting. When entering a new Building Manager Agreement, which can be a contentious exercise at best, it is better to avoid making the vote any harder than it needs to be. Therefore, in many circumstances it may be preferable to enter a standalone licence that sits alongside the Building Manager Agreement, rather than an agreement merged with a licence.

There are a variety of ways that a manager can secure their rights to use common property. Choosing the best option for your business can be a strategic decision that needs to reflect your relationship with the Owners Corporation, the nature of your business and your future plans to sell your business. And if you don't live in NSW, the ideas discussed here apply everywhere in Australia, but the laws are different. No matter where you live you should discuss securing your rights to use the common property with a Management Rights specialist lawyer.

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