
The Case of the Rejected Request for Documents

Publication / Date: The CHOA Journal-Spring 2018

Written by: Adrienne Murray / Hammerberg Lawyers LLP

Receiving requests from owners to review strata corporation documents is often troubling for strata councils. Such requests can be extremely time consuming for the strata manager or strata council members. An even greater difficulty arises for strata councils when owners inundate the strata council with requests or, rather than simply requesting to review or receive copies of documents, the owner sets out a list of questions that they want the strata council to answer.

A recent decision¹ of the Civil Resolution Tribunal (“CRT”) has considered whether a strata corporation can refuse to provide documents and information requested by an owner and if so under what circumstances.

In *KAS 463*, the owner had sought an order for damages against the strata corporation for, among other things, the failure of the strata corporation to properly respond to the owner’s request for documents.

In considering what documents an owner is entitled to review or receive, the CRT confirmed that the strata council has no obligation to produce records that are not listed in section 35 of the *Strata Property Act* (the “Act”).

The CRT also confirmed that the strata corporation is only required to produce the documents that fall within the retention period set out in the *Strata Property Regulation*.

Section 35 of the Act permits owners to review or receive copies of the following documents during the period as noted:

- minutes of annual and special general meetings and council meetings, including the results of any votes; *(at least 6 years)*
- a list of council members; *(current copies)*
- a list of *(current copies)*
 - (i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements,
 - (ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,
 - (iii) names of tenants, and
 - (iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148;
- books of account showing money received and spent and the reason for the receipt or expenditure; *(at least 6 years)*
- the registered strata plan and any strata plan amendments as obtained from the land title office; *(must be permanently retained)*
- this Act and the regulations; *(current copies)*
- the bylaws and rules; *(current copies)*
- resolutions that deal with changes to common property, including the designation of limited common property; *(must be permanently retained)*
- waivers and consents under section 41, 44 or 45; *(at least 6 years)*

¹ *Mellor v. KAS 463*

- written contracts to which the strata corporation is a party; *(at least 6 years after the termination or expiration of the contract or policy)*
- any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation; *(must be permanently retained)*
- the budget and financial statement for the current year and for previous years; *(at least 6 years)*
- income tax returns, if any; *(at least 6 years)*
- correspondence sent or received by the strata corporation and council; *(at least 2 years)*
- bank statements, cancelled cheques and certificates of deposit; *(at least 6 years)*
- Information Certificates issued under section 59; *(at least 6 years)*
- the records and documents referred to in section 20 or 23 obtained by the strata corporation; *(various)*
- any depreciation reports obtained by the strata corporation under section 94; *(must be permanently retained)*
- any reports obtained by the strata corporation respecting repair or maintenance of major items in the strata corporation, including, without limitation, engineers' reports, risk management reports, sanitation reports and reports respecting any items for which information is, under section 94, required to be contained in a depreciation report; *(must retain until the disposal or replacement of the items to which the reports relate)*

The CRT stated that the strata corporation has no obligation to answer questions set out in the correspondence of the owner. Their obligation is limited to providing the documents as set out in section 35 of the Act.

The owner had made numerous requests for documents. The decision noted that up to 50 emails a day had been sent between February and April 2016 which totaled approximately 600 emails. In four days

the owner had sent 53 requests for documents and information. In an email to the strata council the owner made it clear that she would bury the strata council in paper and that she was entitled to send as many requests as humanly possible.

The CRT accepted that the strata corporation had never denied the owner access to records identified in section 35 of the Act.

The CRT concluded that, given the volume of ill defined requests, the strata councils' actions in failing to respond in the 14 days required by the Act were not unreasonable and that in the circumstances of the owner's increasing vexatious behavior there should be no order against the strata corporation. The CRT stated that the owner's requests were intended to harass and bury the strata council in paper and do not deserve to be supported in the form of a remedy against the strata corporation for its failure to strictly comply with the Act. However the CRT cautioned the strata corporation that it should be extremely cautious in making any determination that an owner is being unreasonable. If the strata corporation is incorrect the strata corporation could be found to be in violation of the Act.

In a different decision², the CRT found that LMS 2970 had acted in a significantly unfair manner by limiting an owner's inspection period to one hour at a time thus forcing the owner to return on eight separate occasions to review documents. The CRT found that there was no reason that the inspection period could not have been four hours or more at a time. The CRT also held that the strata corporation could not deny an owner the right to review documents that had previously been reviewed. In this case the CRT found that the requests were not unreasonable or vexatious.

As the two cases show, the number of requests from an owner will need to be extreme before an owner will be found to be unreasonable or acting in a manner that is vexatious. Simply requesting to review numerous documents, as was the case in *LMS 2970*, will not be viewed as extreme. Strata councils should therefore be cautious before refusing access to documents or before failing to respond to such requests. Where a strata council believes an owner is acting in an unreasonable and vexatious manner with respect to the request to review or receive copies of documents the strata

² *Wang v. LMS 2970*

council may wish to obtain the opinion of the strata corporation's lawyer before denying access or refusing to respond to requests made pursuant to section 35 of the Act.

Enforcing CRT Orders

All CRT orders, including consent resolution orders, are enforceable as court orders. A party to a CRT order can by file a validated copy of the order with the court

- after any applicable appeal period has passed and leave to appeal has not been granted
- leave to appeal has been denied, or
- the appeal is heard and the Supreme Court confirms the decision of the CRT.

For strata property claims, CRT orders may be filed with Supreme Court of BC or, if the order is for financial compensation or the return of personal property valued within the monetary limit for claims under the *Small Claims Act*, (currently \$35,000) with the Provincial Court. Orders filed with the court have the same force and effect as if they were a judgement of the court with which they are filed.