

# The importance of master keys



By Will Kenny, Mahoneys

**A caretaker's obligation in respect of master keys has become of particular importance in recent years when it comes to buying or selling a business.**

Most agreements require a caretaker to hold and maintain a register of master keys on behalf of the body corporate and lot owners. While the duty itself is straightforward, we have seen various instances in recent years where managers selling their businesses have become liable for considerable costs (in some circumstances up to tens of thousands of dollars) where master keys have been misplaced or are otherwise unaccounted for.

Traditionally, an outgoing manager will have handed over all keys at settlement without a buyer paying too much attention to whether all keys were in place. It was the assumption of a buyer that whatever keys they received were those originally received and held by



the previous manager. Unless the scheme had a designated locksmith with their own key register containing a record of all master keys issued, there would have been no way for a buyer to easily identify if all master keys had been provided to them. It was not common practice for a buyer to raise any queries and nor for a body corporate to request a reconciliation.

Nowadays, we are often seeing bodies corporate, at the time of an assignment, ask the outgoing manager for a register of master keys reconciled against the locksmith's register. If it is apparent that there are missing keys issued by the locksmith (even where any number of keys may have been issued to a previous manager) a body corporate will treat this as a serious security concern.

In circumstances where there is no other option but to re-key the building, a body corporate may oblige the outgoing manager to pay the costs involved prior to the completion of a sale. It is a harsh and unfortunate reality for managers who were innocently unaware of what keys they should have received at the time of a purchase.

An outgoing manager may question their liability if they have not lost any master keys during their tenure. A standard term of the assignment is that the body corporate cannot hold the incoming manager liable for any breach of a predecessor. For an outgoing manager, this is the best

argument against any potential claim of the body corporate. The difficulty is that a body corporate can use its leverage to withhold consent and insist that the outgoing manager re-key the building before approving an assignment. Regrettably, this puts the outgoing manager in a difficult position where they are obliged to accept the body corporate's demands.

What can you do? If there is no locksmith for your scheme with a corresponding register, you should check to see if there was a record of keys handed over by the seller when you took over the business. If not, it is almost impossible to determine whether all keys remain in place. However, you should start your own register of the keys you hold.

If there is a locksmith and it is clear that there are missing keys, you will need to treat the issue carefully. As is the case in any building, it will all depend on the relationship you have with the committee and how cooperative they are in handling the issue. Some bodies corporate will be satisfied if you can demonstrate that the keys you now hold (even though they are not all that may have been issued) are all that were originally provided to you.

If you are intending to sell, you should expect that either the buyer or the committee will ask for a master key reconciliation. The industry standard special conditions now require a seller to provide copies of key registers to a buyer. ■

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