mahoneys
The Management Rights Lawyers
ManagementONE
The quarterly newsletter from Mahoneys
July 2019 Issue 13

Assignments Made Difficult

By John Mahoney

A few short years ago I wrote an article "Let's not kill the goose" where I expressed concern that the number of new unqualified entrants to the management rights industry, and the increase in disputes that was creating, would damage and jeopardise the industry if nothing was done to rectify the problems.

Despite efforts from ARAMA, certain industry professionals and some of the brokers, unfortunately what we see happening in the market demonstrates that my predictions have proved correct.

On the positive side, those managers who are looking after their body corporate, their owners and their own business are going exceptionally well. These are the managers who ask "How can I do a great job for my owners and the complex?" rather than "How can I do less but get paid more?"

Generally though, disputes between managers and bodies corporate have increased. Remedial action notices are common place. Assignments of management rights have become difficult, protracted and expensive. Bodies corporate are engaging independent experts to assess a new manager's competence – if the report is negative it is virtually impossible to accuse the body corporate of unreasonably withholding consent to the assignment.

There have been more refusals to consent in the past year than I have seen in the previous 10 years. By the time consent is refused the buyer and seller have spent many thousands of dollars on legal and accounting fees. Top ups or other variations to agreements are harder to achieve for many managers.

So why do we have the problems and what can be done about it? There are many answers to that first question but the two principal ones are these. The first is the large numbers of inexperienced and unsuitable people buying management rights without understanding the nature of the role. The second is the long held misconception about a body corporate's entitlement to properly investigate and reject a proposed new manager without appropriate qualifications and experience.

I am not so naïve to suggest that there are not problems with dictatorial chairpersons or difficult committees. Of course there are, but they are in the minority. Not even they can be blamed where a manager has no comprehension of gardening or cleaning responsibilities, fire equipment maintenance or regulatory compliance.

What then is the answer? In my view it starts with education and training. And not just so that the proposed new manager can tick a box to say that training has been done, but rather meaningful training which he or she realises is vitally important (if not critical) and where he or she fully engages and gains a true appreciation and understanding of the role and its responsibilities.

For any new entrants I believe the ARAMA Induction Training Program is a must. There are many components to it and gives an excellent broad overview of the various facets of the resident managers role.

Whether we like it or not the regulatory compliance which a resident manager needs to understand and undertake today is dramatically more than it was 10 years ago, so there needs to be specific training around that. For many new entrants there is generally also a need for some practical hands on training for gardening and lawn mowing.

At a recent industry breakfast hosted by Mahoneys we discussed these matters amongst the large number of industry participants. There was consensus on the need for such training and we are to develop a list of other acceptable training regimes for new entrants. There was also consensus on the concept of a proposed new manager meeting with the committee in the early contract stages to ascertain the likely position of the committee to the request for consent to the assignment.

Whilst sellers typically never want to tell the committee about a sale until the contract is unconditional, that approach may have to change. It is in the seller's interest to know up front that the committee is likely or unlikely to consent – if it is the latter the seller (and buyer) may well save thousands of dollars of wasted legal and accounting fees.

BOQ BURLEIGH HEADS
Management and Letting Rights Seminar

Welcome to BOQ Burleigh Heads.
Your Management and Letting Rights Specialists.

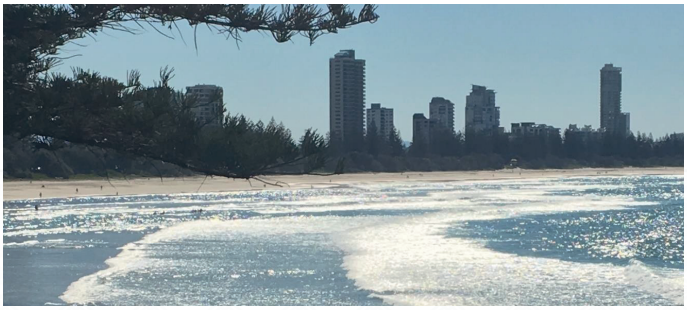
诚挚欢迎您来昆士兰银行伯利角分行，

我们的信贷专家很开心为您提供关于物业管理权的服务。

If you are considering a future in the Management & Letting Rights Industry, BOQ Burleigh Heads are very well respected and experienced Management & Letting Rights lenders, right here on the beautiful Gold Coast.

We invite you attend an informative Management & Letting Rights Seminar to be held on Saturday 21/9/19 followed by a complimentary morning tea.

Our Specialist Seminar Panel:
- **BOQ Burleigh Heads;**
- **Property Bridge / Management Rights;**
- **Mahoneys – Solicitors; &**
- **Brown and Benson – Accountants.**



Date: Saturday 21st September 2019
Time: 10am to 11:30 am
Where: The Surf Club Burleigh Heads / Level 2 – Hinterland Room
As there are limited seats - Bookings are essential.
To secure your seat at this Premier Event contact us via the BOQ Burleigh Heads Branch Email - burleigh.heads@boq.com.au or alternatively give us a call on 07 5569 7088.

What The End Of NRAS Means For Management Rights

By Will Kenny

There has been recent conjecture amongst industry stakeholders about the impact on management rights businesses once the incentive period under the National Affordable Rental Scheme (NRAS) comes to an end. The scheme was first introduced over 10 years ago when housing affordability was one of the central topics of political and social debate. It was designed to provide a rental discount (up to 20% of the market rate) to middle income earning tenants while giving the owner certain tax benefits that can be claimed at the end of each financial year.

In a management rights sense, there are a number of NRAS providers, mainly not for profit organisations, approved to manage properties that are accessible under the scheme. The provider has a responsibility to ensure that the letting of the properties comply with the prescribed regulations and that the objectives of the scheme are met. From there, the scheme has offered a number of different models that govern the relationship between the provider, the owner and a management rights operator. Each offering different levels of control for the provider depending on what model is in place.

Over the years NRAS has received a mixed response from the industry. Financiers and valuers alike have shown concern about the control the provider has over the owner and the property, particularly the influence in directing an owner to appoint a managing agent or to manage the property itself once the incentive period expires. There have been various ways to deal with these issues including warranties and restraints from the provider in favour of the manager. Other practical considerations are the lower rent achieved on the property and the onerous paperwork and compliance obligations on the manager.

Looking forward, managers should be optimistic about the incentive period ending. Upon expiration, the inability of an owner to claim the generous tax benefits will be offset by the higher rent the property will be able to achieve, not to mention enabling the property to be rented by a broader range of prospective tenants. Not all NRAS tenancies in a complex will end at the same time – as with any complex the tenancy durations will be staggered. As for another common fear, there should be little reason for managers to be apprehensive about the likelihood of owners leaving the letting pool. If the manager has been giving a good service to owners, there should be minimal risk of owners looking to an external agent to manage their properties.

From a transactional perspective, the market has historically adopted a lesser multiplier for NRAS properties depending on a range of factors. We expect this will continue as financiers remain uncertain about what the schemes end means for management rights. Indeed we have seen financiers shy away from businesses with a large proportion of units in an NRAS scheme close to its end. However for the reasons expressed above we find that difficult to understand. We do not see why financiers or potential management rights buyers should be deterred about NRAS ending in a complex. We see minimal if any adverse impact to the industry – we expect it to show the resilience it has so often shown in the past and ride through yet another market challenge.

mahoneys

info@mahoneys.com.au
www.mahoneys.com.au

Brisbane office
L 18, 167 Eagle Street
Brisbane Qld 4000

GPO Box 3311
Brisbane Qld 4001

p 07 3007 3777
f 07 3077 3778

Gold Coast office
L 2, 235 Varsity Parade
Varsity Lakes Qld 4230

PO Box 482
Varsity Lakes Qld 4227

p 07 5562 2959
f 07 5575 7803

CPI increases

Most caretaking agreements provide for CPI increases. We often see that managers have not claimed these increases for several years! The following is a table of the Brisbane All Groups CPI figures.

For example, if your remuneration started at $100,000 in October 2010, the correct calculation for the October 2014 increase based on Brisbane All Groups CPI would be $100,000 x 106.5 (i.e. the last index figure before the review date) / 96.9 (i.e. the last index figure before the commencement date) = $109,907.

That would be increased by 10% GST if there is a GST escalation clause in your caretaking agreement. Managers should check that there is.

Mahoneys have assisted many managers in having their remuneration increased to market level. Up to date figures can be found at http://www.oesr.qld.gov.au.

	Mar	Jun	Sep	Dec
2006	83	84.5	85.2	85.1
2007	85.5	86.7	87.5	88.4
2008	89.6	91.1	92.4	92.2
2009	92.4	92.9	94.2	94.5
2010	95.2	95.9	96.9	97.4
2011	98.6	99.6	99.9	99.7
2012	99.9	100.5	101.6	101.9
2013	102.0	102.5	103.8	104.6
2014	105.2	105.8	106.5	106.7
2015	106.7	107.4	108.1	108.5
2016	108.5	109.0	109.7	110.2
2017	110.5	111.0	111.4	112.3
2018	112.4	112.9	113.4	114.0
2019	114.1			