

Avoiding disputes

By John Mahoney

As I began to gather my thoughts before writing this article, I thought back to the night of the ARAMA awards presentation evening and to the two managers of the year (permanent letting and holiday letting) for whom Mahoneys have been fortunate to have acted for many years. As I thought about the attributes that make each of them great managers – and very worthy of their awards – I realised they do all of the things I was contemplating including in this article about avoiding disputes.

A line I have used in recent presentations also fits these two exceptional managers – instead of focusing on how you can do less and be paid more, focus on providing exceptional service to impress your owners and the financial and other rewards will follow.

Understand your agreements

So many disputes arise because of misunderstandings between the body corporate and the manager about exactly what the manager should be doing. Sometimes the owners have an unreasonable expectation of performance as they have not bothered to read the agreement. Equally though managers can be guilty of under-delivering on the reasonable expectations of owners as they do have a good knowledge of their duties and what is required of them.

A manager should be totally familiar with the content of the agreement and make sure that everything that is required under the agreement is being done. Get any registers in place - master keys, service contractors (fire safety, lifts etc).

Do a good job

Once you know what you should be doing, do it well. I hear some managers say that the body corporate should not complain because the manager is doing a reasonable job. Well that might not be enough under your agreement and even if it is will that put you in good standing with the owners?

Make sure you have all necessary systems in place – even if your agreement does not have a schedule of duties setting out daily, weekly, monthly etc duties, make one up yourself or get an expert to

do that and stick to it. Get from ABMA or from us the list of regulatory compliance issues.

Do some self-analysis

Have a good look around at other complexes and compare yours to those – set your standards high. Don't give your opponents any opportunity to find valid fault with what you are doing or not doing.

Assess whether you are giving owners value for money. Whilst the cost to each owner is minimal, owners look at your total remuneration package, not just what it costs them as an individual. As a rough rule of thumb for every \$50,000 in annual remuneration a body corporate might reasonably expect that there are 25 hours per week of caretaking duties being carried out.

Tell the owners you are doing a good job

A manager should constantly reinforce to owners what a great job the manager is doing, particularly investor owners. Communicate that through newsletters each month, or a brief flyer with monthly statements. Send some photos of the complex, or of their unit if you have replaced furnishings or fittings. Tell owners how good your occupancy and/or rent levels are in comparison to others. Let them know what you have been doing in relation to marketing. Let owners know what major items of work you are undertaking and how much effort you are putting in for them. Make sure you are seen around the complex doing odd jobs – a good time to do that is as owners are going to or coming from work.

It is important to make sure that the owners are aware that you as manager are the one responsible for the way the complex is presented, and for all the good things that are going on at the complex. Take charge of as much as you can to avoid having others usurp your authority or take credit for your efforts. You want owners to know that you have your finger on the pulse and you are the one that makes things happen. One day you will need the owners' support and you want them to believe you before anyone else.

Other action

Build strong relationships with as many owners as you can. Actively seek out owners who appreciate

what you do for committee positions. Lobby your owners to vote for the committee nominations that you know will be manager friendly and who like you have the interests of the complex at heart. There is no restriction on you lobbying owners to vote in a certain way.

If conflict does arise, get on top of it straight away. Don't let it fester. Approach the person or persons concerned and talk the issues through. Be careful not to go on the attack unless the circumstances demand that. Deal with the issues raised calmly and rationally.

Go through the committee minutes carefully to address all issues that relate to management. Use the minutes as a checklist to make sure you do all the things the committee is expecting you to do.

Document everything that could be contentious. Send emails to confirm issues that you have discussed or to confirm instructions you receive where there is a possibility for confusion or misunderstanding in the future.

If your agreement provides for the body corporate to have a nominated representative to liaise with you, make sure that one is appointed. That way you only have to deal with one person and not a number of people with perhaps conflicting ideas about what you should be doing. If your agreement does not provide for a single liaison person, ask the committee to appoint one anyhow for efficiency and accountability purposes. Encourage the nominated person to accompany you on a regular walk around the complex so that you can get on top of any potential issues before they escalate.

If there is disagreement about the extent of your duties or how you should carry them out, seek assistance from an independent expert and/or from the ABMA Code and discuss with the committee the outcome of that.

Remember that your owners are your boss. Treat them with respect and diplomacy. Listen to their concerns and complaints, show them empathy when justified and firmly but politely tell them if you do not share their view.

Stop reading this article!

By John Mahoney

Instead, go and check the option exercise dates in your management rights agreements and deeds of variation where you or a previous manager may have added a further option/s to the agreements.

I have in many previous articles reported instances of managers failing to exercise options in their management rights agreements. Unfortunately we are seeing more and more instances of this occurring. I suspect it has much to do with many new managers not appreciating the importance of their agreements generally and more specifically not understanding how the options in agreements work.

Many managers wrongly think that topping up their agreements (the term the industry uses for amending an agreement to add another option) has the effect of exercising an existing option and somehow automatically extending the term. That is not so.

Very few options are "automatic". Many require the option to be exercised by giving written notice before the end of the current term but many give a window of opportunity within which to exercise the option – typically between 6 and 3 months from the end of the term.

So I encourage all managers to go and look carefully at exactly what their agreements and deeds specify. Check to see what if anything your lawyer told you when you purchased. Check to see how the notice must be given – most agreements will require written notice to actually be sent by post or hand delivered to the body corporate manager or secretary. Email may not be enough. Consult a lawyer now if you are in any doubt at all. Diarise the date/s and some earlier reminder dates in your calendar, mobile phone or wherever you can.

The consequences of not exercising an option by the due date can be dire. If an option is not exercised in accordance with the terms of the agreements, the agreements will expire at the end of the term, in which case the manager no longer has the right to conduct the caretaking and letting business for the scheme. In such a situation the only solution generally is for the manager to request the body corporate to enter into new agreements. However, depending on timing, it may be possible to adopt a simpler process at a general meeting. We have successfully devised and used a simpler procedure at general meetings

resulting in a lot less expense for the manager but the opportunities to do so are rare.

Problems can arise if, after the manager forgets to exercise an option, the body corporate exploits the opportunity and seeks to impose changes to the agreements against the manager's interests. Even worse, if there has been real conflict in the complex, the body corporate might seek to tender for and engage another contractor to conduct the business or do away with management rights altogether. We have seen this happen more than once in recent times.

To avoid this from happening, as suggested above, managers should ensure that they diarise all of the option extension dates to ensure that they do not lose the opportunity to renew the agreements. At the time of exercising an option, managers should ensure that the extension of the agreements is properly recorded in a document executed by the manager and the body corporate, as the documenting of the option being properly exercised and the body corporate's acknowledgment of that is something a subsequent buyer will want to see. We can of course assist you with that at the time.



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Mahoneys was awarded Service Provider of the Year at the inaugural Australian Resident Accommodation Managers Association (ARAMA) industry awards. John Mahoney was on hand to receive the award from Stewart Shimmin (Resort News Sales Manager). The award is recognition of Mahoneys tireless commitment to the management rights industry.



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