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The Management Rights Lawyers
ManagementONE
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Is your buyer up to scratch?

by Michelle Lim, Mahoneys

In previous articles, we covered taking steps to prepare for your sale well in advance.

To recap:

1. Letting appointments – ensure they are assignable;
2. Management rights agreements – ensure that you have all the documents in order and all options exercised;
3. Term of agreements – ensure that they are as close as possible to the maximum term under the respective module;
4. Termination clause in agreements – though not as critical as it used to be 5 years ago, we still see instances where banks have insisted on having these Gallery Vie offensive clauses removed; and
5. Financial figures – ensure the figures are all up to date by getting and utilizing expert help.

Equally if not more important than those 5 points is the need to qualify potential buyers and where necessary, insist on appropriate training.

There is no doubt that obtaining body corporate consent to an assignment is becoming increasingly lengthy and arduous. The outgoing manager is expected to bear the costs of the body corporate's lawyers engaged to advise on the assignment. It is unsurprising that many outgoing managers perceive that some lawyers acting for bodies corporate in assignments use the opportunity to gouge fees, particularly so if the buyers are not qualified. Just recently, we saw a body corporate's lawyer issuing an invoice for more than $10,000 for a single scheme assignment. In another, albeit more complicated transaction involving a top up and an assignment, the fees claimed (but disputed) were some $35,000!

Whenever I speak with agents, sellers or buyers alike, there are 3 things I will always talk about. **E**ducate, **A**cquaint and **T**raining / Tuition, abbreviated E.A.T.!

Educate – Agents are usually the first ones to make contact with a prospective buyer and will usually try and ensure that a buyer is financially viable and has a reasonable understanding of the duties and expected standards to be met. Problems have arisen largely as a consequence of new entrants being poorly advised and lacking the understanding of the role a good manager plays, or the risks associated with such businesses and without the skills to deal with the complexity of the role and any conflict when it arises. It is important for any buyer to come into a business with eyes wide open and certain they understand and can deal with the ups and downs of the industry. Such an understanding facilitates the sale process.

Acquaint – Incoming managers need to be familiar with the caretaking and letting agreements as well as the by-laws of the scheme. Think about this – you wouldn't be paying anyone top dollar and expect only average service. Likewise, it is fair and reasonable for your body corporate to be expecting a level of standard commensurate with the remuneration they are paying you. I acknowledge there are some members of the bodies corporate who are unreasonable and border on bullying, but that is a topic for another day.

Tuition and Training – It is gradually being accepted in the industry that new entrants must complete the ARAMA management rights induction training program, some regulatory compliance training and some practical hands on training for a reasonable period of time.

When a prospective buyer refuses to expend funds on training or insists that undertaking training is a mere opportunistic ploy for third party gains, this industry is probably not the right one for them. On the other hand, I tell my sellers to provide as much training as they can to the incoming manager and encourage them to undertake as much external training as possible, in order to prepare them for the interview. Do not hold back on imparting as much knowledge as possible. The more they know, the better they perform and the higher the likelihood of success at the interview.

New entrants should not see training as merely something they need to do (but otherwise ignore) just to get consent. They should embrace the training and use it to learn more about the business they are buying – it will help them enormously in the long term.

The selling process can be stressful and emotionally draining but with the right strategy and approach, it can be a lot easier.

Over 100 managers attend Mahoneys event

We had over 100 resident managers attend our final event of the year – where we heard from industry leaders John Mahoney and Michelle Lim (pictured) (Mahoneys), Lynda Kypriadakis (Diverse FMX), Mike O'Farrell (MLR Services) and Alison Sun (Accom Valuers).

Michelle explained the important difference between exercising an option and requesting a top up; John provided an example of how not to deal with a "remedial action notice" (RAN); Lynda gave us some practical tips on what leads to a RAN and how avoid them; Mike spoke about building relationships with committees (including how to deal with hostile committees); and Alison provided an update on the impact COVID has had on valuations and multipliers.

The night concluded with an opportunity to ask questions of the speakers and network with other people in the management rights industry.

Service Provider of the Year

(for 2 years running)

Mahoneys has been awarded ARAMA Service Provider of the Year for the second year running. The award is recognition of Mahoneys tireless commitment to the management rights industry and reinforces Mahoneys' position as the leading management rights law firm in Australia. A key to Mahoneys success is the quality of our team and our unwavering commitment to providing market-leading legal services. John Mahoney (second from the left) was on hand to receive the award from ARAMA CEO Trevor Rawnsley (far right).

Understanding your caretaking duties

By Will Kenny, Mahoneys

There is no doubt that there are today many **more disputes** about caretaking duties. Most of these are a consequence of the body corporate's **expectations** of what the manager should be doing differing greatly from the manager's expectations. This **variance** in expectations is more often than not due to caretaking agreements with duties that are generic, vague and non-descriptive.

There are many caretaking agreements around which are decades old and **no longer appropriate** for the complex. Whilst they are in obvious need of updating and variation, there is little apparent incentive for the manager to accept a body corporate's proposal to do so.

Consider a complex containing large common property lawn and garden areas and an agreement which requires the manager to "mow lawns and maintain gardens **regularly**". The obvious question is how **frequently** must this duty be performed? Perhaps unsurprisingly it is often the case that the parties have very different expectations about that and a dispute will arise. Whilst resolving the dispute will involve an objective determination of what "regularly" means, with regard being had to the nature of the complex, the agreement overall, the time taken to perform the manager's overall duties and the remuneration the manager is paid, this is an **uncertain way** to have to interpret what could, and should, have been very simply stated in the agreement in the first place.

To overcome these **problems** we are seeing more and more instances of a body corporate and manager engaging an independent expert to conduct a time and motion study of the caretaking duties. This determines the time and frequency of the duties applicable to the complex and the appropriate remuneration for those duties. The parties can negotiate a reduction or increase in the **frequencies** and a corresponding variation in the **remuneration**, then incorporate the changes in the existing agreement or in a new agreement.

The body corporate receives the **benefit** of an agreement which contains a tailor made comprehensive and detailed schedule of duties with the assurance that the manager is appropriately remunerated. The schedule **removes the vagueness** of duties, particularly where expressions such as "regularly", "as required" and "as necessary" were once used. Instead, the schedule sets out a clear frequency of the duties (i.e. daily, weekly, monthly, and annual performance) together with a specific description of the particular task.

The manager gains the **benefit** of **absolute clarity** around the caretaking duties and will usually have been able to negotiate an increase in the remuneration or some other benefit such as support for a top up or new longer term agreement.

Some managers are concerned about seemingly having to do more under a tailored schedule of duties than what is required of them without such a schedule. This is a common **misperception**. While it might appear that the schedule extends beyond what the agreement initially contained, in most cases it is just reiterating in a **clear and concise way** what was always required and removing opportunities for disputes.

If you are experiencing constant **scrutiny** about the performance of your duties, it is prudent to understand exactly what your agreement requires of you. If it is apparent that your duties are **ambiguous** and the cause of **disagreement** between you and your body corporate, you should consider **proposing** a time and motion study for your complex. If done properly, the outcome is likely to be an improvement in the understanding of the agreement by both parties and in your relationship with your body corporate.

mahoneys

Brisbane office
L 18, 167 Eagle Street
Brisbane Qld 4000

p 07 3007 3777
f 07 3077 3778

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

p 07 5562 2959
f 07 5575 7803

For latest CPI figures go to

Click here for Brisbane All Groups CPI figures

For example, if your remuneration started at $100,000 in September 2016, the correct calculation for the September 2020 increase based on Brisbane All Groups CPI would be $100,000 x 116.2 (i.e. the last index figure before the review date) / 109.75 (i.e. the last index figure before the commencement date) = $105,925.25. Mahoneys has assisted many managers in having their remuneration increased to market level.