

The importance of good legal due diligence

Due diligence, DD and legal due diligence are terms used to describe the review of the legal aspects of a management rights transaction. New entrants to the industry often confuse the legal due diligence process with the accountant's review of the business financials (e.g., the net operating profit), otherwise known as verification of figures.

The management rights business contract defines legal due diligence as a review of the business and unit contracts, the management rights agreements, MIA requirements, the body corporate by-laws, the community management statement and body corporate records.

But what does that actually mean? For a lawyer it means



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reading, lots and lots of reading. Personally, I am yet to fully embrace our paperless office like the rest of my colleagues. When I undertake a legal due diligence my desk is full of paper covered in highlighter, hand written notes and coloured tags.

I do all of this as part of a comprehensive review process that helps me identify, and assess, any potential legal and commercial issues before consolidating my findings into a concise due diligence report that I provide to my clients.

At Mahoneys, our legal due

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diligence generally covers (but is not limited to):

- The caretaking and letting agreements along with any assignments and variations to those agreements. More often than not there will be two to three documents that form the agreement but this can be upwards of 10 documents. Importantly, these documents need to be read together to determine the rights and obligations of the manager and body corporate. We look at a range of matters including: the length of the

term of the agreements and when any options are due to be exercised; the remuneration being paid to the manager including when and how that remuneration is increased; the duties of the manager including any concerns with those duties; whether the manager or the body corporate is required to provide materials and equipment; if the manager is required to reside onsite and any office hours requirements; and if the manager is given any rights to use common property

for storage, office/reception areas or car parking.

- The community management statement and by-laws for the complex. We will look at the module that applies to the complex (because this determines the maximum term of the agreements (25 versus 10 years), the permitted use of the lots and any exclusive use of common property.
- A body corporate search. This search covers the written records of the body corporate including financial records, minutes of meetings, and copies of relevant correspondence, sinking fund forecasts and safety reports. This also covers the minutes relating to the management rights agreements (to make sure they comply with the legislation) and any problems at the complex.
- Searches that relate to the assets being purchased. This will include a title search and copies of the plans that relate to the lot or unit being purchased, and PPSR searches of any assets (e.g., copiers, tools, machinery) that are being purchased. We will also undertake searches on the intellectual property that relate to the business (e.g., business names, domains, and trademarks).
- Any MIA issues that relate to the business. MIA refers to the managed investment scheme provisions of the Corporations Act administered by the Australian Securities and Investment Commission (ASIC). This is because ASIC considers a typical Queensland management rights to be a serviced strata scheme and therefore a managed investments scheme under the Corporations Act. If the complex is a serviced strata scheme, then there are a number of requirements relating to the conduct of the business and the letting pool under the MIA.
- The purchase contracts. This is to ensure that all the details are correct (party names, price, any

conditions, key dates etc) and that the buyer is getting everything they need to operate the business.

The value of the legal due diligence process cannot be understated. This might sound extreme but what needs to be understood is that the value of a management rights business relies on the existence of a valid management rights agreement.

If a management rights agreement is invalid, or the term of it has come to an end, there is no management rights business, all that is left (at best) is a rent roll (which has a significantly reduced multiplier) and a Lot.

Some examples of issues that can be identified during the legal due diligence include: if the option to extend the term has not been exercised correctly then the agreements can come to an end before the total term of the agreements; if the body corporate has taken steps to terminate the agreements then the agreements may come to an end; if the agreements have not been passed properly by the body corporate in accordance with the strict requirements of the legislation then the agreements may be invalid and the manager may be unable to rely upon the agreements in their dealings with the body corporate and any future sale and if a purchaser is unable or unwilling to comply with the duties set out in the agreement (e.g., the requirement to reside on site), then following settlement the purchaser will immediately be in breach of the agreements which puts the buyer at risk of having the agreements terminated by the body corporate.

For a buyer it is extremely important to read the report prepared by their lawyer as well as the duties contained in the agreements before making a decision on whether or not to proceed with the purchase of a management rights business.

It is also important to choose an experienced lawyer with a detailed understanding of body corporates, the management rights industry and the supporting legislation to avoid issues that might get missed during a poorly conducted legal due diligence process. ■

Raas

Management Rights

Management Right Sales Specialist

Brisbane CBD & Inner Suburbs

RAAS Property Group (Resort and Apartment Sales) is one of the leading agencies in Queensland specialising in the sale of management rights, apartments and townhouses.

RAAS is offering an opportunity for the right person to join us as a professional licensed broker to specialise in and build on the sales of management rights. RAAS offers Brokers access to an exclusive and extensive database of complex managers and the outstanding opportunity for motivated and skilled sales agents to achieve a high level of commission income.

The applicant must possess the following attributes to be successful with their application for this amazing position:

- ✓ Be a fully licensed real estate agent in the state of Queensland
- ✓ Have a minimum of 18 months' experience in either the management rights industry or general real estate
- ✓ Personal presentation is paramount if you are to be considered for this position and the successful applicant
- ✓ Must be self-motivated and capable of negotiating at all levels to bring the sale to a satisfactory conclusion on behalf of the seller
- ✓ As this will be a commission only position, all applicants must understand that they must have the financial capacity to carry themselves for the first 3 months, this is primarily due to the length of the contract process within the management rights industry.
- ✓ Excellent commission available for the right applicant
- ✓ The successful applicant will show a desire to learn from being mentored by the director of sales within the company, as well as being capable of contributing to the overall harmony within the current sales team, and provide a demonstrated desire to increase the sales growth within RAAS Property Group
- ✓ We will require personal and business references attached to your application

If you genuinely believe that you have the right attitude, commitment and desire to fulfil all of the above and then some, we would welcome your application for this specialised position. All applications and interviews will be kept confidential and conducted in a timely and professional manner.

We wish all those who believe they have what it takes to become the successful applicant in this specialised position, and become yet another successful long term Management Rights Broker within the RAAS Property Group all the best with their application.

**If this is YOU, Please email your resume to
robertc@raas.com.au.**