

## ManagementONE

The quarterly newsletter from The Management Rights Lawyers

## Can a management rights operator profit from advertising?

Despite having written articles about this issue in the past, I am regularly asked by clients, sales brokers and others if it is lawful for a management rights operator to profit from advertising levies collected from owners. There has been a common belief that a manager cannot, or at least if the manager does, that profit is not taken into account when assessing the net profit of the business.

The rationale for that view is that monies paid to the manager for advertising is to reimburse the manager for advertising expenses incurred by the manager. So if there might be anything left over from what the manager has collected in levies after meeting the actual advertising expenses, that excess belongs to the owners, not the manager who must account in some way to the owners for that.

The rule made some sense in the past where advertising took the form of paid advertisements in newspapers, magazines, brochures and other publications. However in today's world advertising rarely takes that form. Today a manager's website is probably the most critical tool in advertising, marketing and promoting a complex. A modern, sophisticated and attractive website can generate significant increases in occupancies and returns to owners.

Developing, maintaining and utilising a website and partaking in other social media promotions and activities are just some of the labour intensive work that a manager does to advertise, market and promote a complex. Whilst any actual expenditure on a website designer and a software provider would be properly regarded as expenses, there is a huge component of labour (by the manager or the manager's staff) that cannot be properly classified as an expense. The consequence, if advertising is treated as an expense, is that the manager cannot be reimbursed from or keep the advertising levies for those labour costs.

I have consistently maintained that advertising and promotion can be treated not as an expense to be reimbursed but as part of a service of advertising, promotion and marketing to be provided by the manager. Where the letting appointment is properly structured in this way, the manager is providing an overall service which involves expenditure by the manager and the provision of labour, time and effort, in exchange for which the owners pay advertising levies.

Where advertising is treated in this way – and advertising levies collected for this purpose – the manager can lawfully retain all of the levies collected without having to account separately to owners

or others for any actual expenditure. All advertising levies collected belong to the manager and any excess above what might be actually expended should be taken into account for profit calculation purposes.

It is important that the fee or charge be properly described, that the POA Form 6 is properly completed and that there is proper disclosure of these things in the letting appointment (as for example in the ARAMA addendum drafted by Mahoneys).

More and more accountants and valuers now take the view that a manager can make a profit from advertising levies, particularly where advertising, promotion and marketing are part of a "bundled" fee or charge as contemplated in the various articles I have published (where most of the manager's fees, charges and commission are bundled into one all-encompassing percentage amount).

However they will look to make sure that any labour costs associated with such activities are accounted for in the profit & loss, that any profit is reasonable, and that there has actually been regular marketing and promotion of the complex to ensure ongoing occupancy levels.

## New smoke alarm regulation – are you clear?

Despite the new smoke alarm regulation being in place for some time, many investor owners, property managers and bodies corporate are still unclear about their obligations and responsibilities.

This article is about the new smoke alarm regulation that is applicable to lots in a community title scheme which might be sold or leased (whether new lease or existing lease being renewed). From 1 January 2022, the smoke alarms in these lots must::

- be photoelectric (AS3786-2014);
- not also contain an ionisation sensor;
- be less than 10 years old;
- operate when tested; and
- be interconnected with every other smoke alarm in the lot so all are activated together.

The legislation sets out that the smoke alarms must be installed in the following locations in a lot:

- on each storey;
- in each bedroom;

- if there is no hallway, between the bedroom and other parts of the storey; and
- if there are no bedrooms on a storey, at least one smoke alarm must be installed in the most likely path of travel to exit the lot.

The smoke alarms must be hardwired to the mains power supply if they are currently hardwired. Otherwise, they can be either hardwired or powered by a non-removable 10 year battery or a combination of both.

### Who is responsible to install and maintain the new smoke alarm - lot owner or body corporate?

Generally, the lot owner is responsible for maintaining their own lot, whereas the body corporate is responsible for maintaining common property.

However as a consequence of the BCCM Act, if the smoke alarm in a lot is connected or wired to the scheme building central alarm panel, or smoke alarms in other lots or smoke alarms on common property,

then the body corporate is responsible for the installation and maintenance of smoke alarms.

### What should a resident manager do?

As caretaker and manager your duties usually include notifying the body corporate of any changes to fire safety requirements and advising the body corporate of any non-compliance of any relevant laws concerning the maintenance and operation of the common property. You should do this by communicating the new smoke alarm requirements to the body corporate and suggesting any actions required by the body corporate if appropriate.

As letting agent, you should notify lot owners who have lots in your letting pool of the new smoke alarm requirements, and ensure that as soon as practical, certainly before the lot is sold or leased (which as above includes a lease renewal), the new smoke alarms are installed.



#### Brisbane office

L 18, 167 Eagle Street  
Brisbane Qld 4000

p 07 3007 3777

#### Gold Coast office

L 2, 235 Varsity Parade  
Varsity Lakes Qld 4230

p 07 5562 2959

Liability limited by a scheme approved under Professional Standards Legislation.

### For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

You will need to click on "All groups CPI, index numbers(a)" to see the detail. For example, if your remuneration started at \$100,000 on 1 September 2016, the correct calculation for the 1 September 2021 increase based on Brisbane All Groups CPI would be  $\$100,000 \times 119.2$  (i.e. the last index figure before the review date – the June 2021 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$109,357.80. Mahoneys has assisted many managers in having their remuneration increased to market level.



Buying/selling  
assistance



Off the plan  
implementation



Renewal  
strategy



Dispute  
resolution

[www.mahoneys.com.au](http://www.mahoneys.com.au)