

What are your leave entitlements?

As any resident manager will tell you, operating a building complex can be very demanding. In larger buildings (particularly for holiday/short-term letting) managers often work seven days a week, leaving very little opportunity to take leave for any extended period of time.

Resident managers, by nature, are service contractors engaged by the body corporate. This means that by law, they are not recognised as employees and do not have the benefit of leave entitlements under the *Fair Work Act*. It is then a matter of understanding if there is provision for leave under your caretaking and letting agreements.

In most circumstances, caretaking and letting agreements will allow managers to take leave up to a period of four weeks per year. This is usually on the condition that the manager appoints a suitable replacement during their absence.



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Such a replacement must have the requisite skills and experience to perform the manager's duties, and more often than not must be approved by the committee. It is important to understand whether your agreements require you to give notice to and or obtain approval from, the committee prior to taking leave, and if a shorter period of notice is permitted in the event of urgent or emergency circumstances.

If your agreements do not contain a leave provision, you need to look at whether your duties may be performed by any delegate of the manager with or without the need for consent. Other considerations

include whether there must be an approved nominee in place (which is important if the person taking leave is a nominee) and if your agreements require someone to reside on site. It is vitally important to be aware of what your obligations are where leave is taken, as any non-compliance could put you in breach of your agreements.

On a practical level, if there is no requirement in your agreements for a replacement to be approved, or if the duties can be performed by any delegate, you should ensure that any staff or sub-contractors are competent enough to perform the duties in your absence. Your committee should also be kept well informed of what your leave arrangements are, and if any replacements have been appointed in your absence. While it goes without saying, you should ensure regular contact with your staff or sub-contractors while leave is taken.

From a letting perspective, the *Property Occupations Act 2014 (Qld)* (POA), contains provision for licensees to take leave. The Act provides that licensees may take leave for periods less than 30 days, and in excess of 30 days. There are certain requirements for each type of leave which also differ if you are an individual or corporate licensee. If you are an individual licensee taking leave for a period up to 30 days you can appoint an unlicensed substitute, provided that the appointment of the substitute and the substitute's consent is in writing and states the period of appointment, the substitute is covered under the individual licensee's insurance (if it is a requirement of the licence to hold insurance) and all such information is kept in the licensee's registered office available for inspection.

For corporate licensees, a licensed director or person in charge can be replaced by an unlicensed person if there is no other licenced person in the company to replace. This is on the condition that the

same requirements above are met, except for the insurance obligation. It is important to note that these provisions do not cover a situation where a licenced person is absent due to resignation or termination of employment. For leave in excess of 30 days, an application must be made to the chief executive of the Office of Fair Trading, with the substitute's signed consent to the appointment along with other supporting information.

There are severe penalties for failure to comply with the legislative provisions of the POA or to carry out the steps prescribed. The leave entitlements under the Act are also subject to any restrictions on leave in your agreements.

In summary, if you are contemplating taking leave it is important to make sure you consider the following before making any arrangements:

- What do your agreements permit (if anything) for taking leave?
- If there is provision for leave, what are the notices requirements and conditions on appointing a replacement?
- If there is no provision for leave, can your duties be performed by any delegate without consent?
- In any event, it is prudent to give the committee as much notice as possible of your leave and details of any replacements irrespective of whether there is need for body corporate consent.
- Consider any requirement under the POA depending on which license you hold and the length of leave you are taking. ■

Will Kenny is an experienced property lawyer at Mahoneys who specialises management rights, property development, commercial property and other general property matters.



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