

Letting appointments: How to increase your charges in these inflationary times

In recent months I have had many clients ask how to go about increasing their fees and charges to their letting owners.

Like all business owners, my management rights' clients are being faced with significant increases in the cost of the services they provide their owners (particularly short-term businesses) where cleaning contractor charges and linen charges have risen dramatically.

In one week two of my clients advised that not only had their linen charges costs gone through the roof but they were now expected to travel to the linen supplier's premises to drop off and pick up linen!



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However, a manager cannot simply unilaterally increase such charges other than in accordance with any increase that might be permitted in the letting appointment. For example, in the ARAMA letting appointment addendum which I prepared there is a right to increase fees and charges

each July in accordance with the increase in CPI for the previous year. Even though that was around 7 percent last year that would be well short of the actual increases many managers have faced.

So, what is the best way to go about securing an increase in your charges? Critically the consent of the owner is required. Such consent must be in writing - in this regard an email will suffice.

There are different ways to go about getting that consent including:

- sending your owners a new letting appointment with an updated schedule of fees and charges and having that signed and returned to you;

- sending your owners a new schedule of fees and charges asking them to either sign and return that schedule or confirm by email receipt of an agreement to the new schedule; or
- emailing your owners with details of the proposed increases to the items listed in your email and asking them to confirm by return email their agreement to the increases.

In each case make sure that you retain on the owners' files a copy of the new appointment, schedule and/or email confirmation as that will be required in the event of an OFT audit or for income verification purposes in the event of a future sale.

Benefits of sending out new appointments

Whilst sending out a new appointment is the most time consuming and difficult option to manage, it is something I seriously suggest you consider if the bulk of your letting appointments are more than five or so years old. I also suggest it is essential that you do that in the case of any old PAMDA Forms 20a. Doing so will allow you to overcome any deficiencies in your appointments and to update your appointments with the latest ARAMA addendum.

It is rare that a week goes by that I am not asked to look at a letting appointment and I am often surprised at the nonchalant or careless approach some managers take towards their appointments and how many errors I see. That is why I favour updating all your appointments and why I thought I would share some of the common problems I see.

I regularly see appointments with the wrong name of the actual letting agent, the wrong licensee, dates missing, signatures missing and in more than one case a letting agent had ticked the service as "sales" rather than

lettings! Managers are often confused about the trading name and the licensee name in part 2. The trading name is your registered business name (if in fact you have one - such as Moonlight Shores Management). If you do not have a registered business name but operate as a company, you may insert the company name. It would never be your personal name/s unless that is also your business name which would be most unusual.

The Licensee name is the name of the licensed company or person/s being appointed as the letting agent. If your company is the letting agent the licensee name is the company's name - it is not the name of the licensed director or licensed person in charge. If you are the letting agent personally, then the licensee name is your personal name/s.

Make sure that in part 4, section 2 you select "continuing appointment" and complete the start date. In part 4 section 3, for permanent rentals make sure you state the asking rent, or more appropriately, the range of acceptable rents. If it is a holiday or short term letting, state something like: "In accordance with tariffs advertised on our website as

varied for market conditions." Part 4, section 4 (Instructions/conditions) must be completed or, as ruled by one court already, the appointment is invalid. I will assume that you are using one of the industry forms which have an addendum or special conditions attached. That being so, add in this section words such as "Refer to attached addendum".

In the commission section the wording would be something like "5.5 percent of rent collected plus letting fee and relet fee described in addendum" for permanent rentals. In the following commission payable section, I like to see the words "When rent payments are received and payment thereof are made to client".

Pay particular attention to part 8, section 1 which relates to expenses you may incur on behalf of owners, not fees and charges you might impose. There is a critically important difference. If an item (such as advertising) is shown as an expense you can only retain the actual expense you incurred and cannot retain any amount above for your time and effort. It would be appropriate to use words such as "Refer to any such items in attached

addendum shown as expenses" here. There should again be reference to the addendum or schedule of fees and charges in section 3 of this part.

Be careful to give details of any benefit you might receive personally in part 8, section 4 eg., credit card reward points or commission on insurances you might arrange. The various industry forms have different special conditions or addendums and special care should be taken in completing these. The ARAMA addendum is relatively simple to understand and to complete. Importantly it has some very carefully worded conditions dealing with the agent's entitlement to make a profit from providing certain services to an owner or guests.

If you offer holiday lettings or short term lettings you may need to include what are commonly referred to as the "forced sale provisions" in accordance with the managed investment provisions of the Corporations Act. If at all unsure, check with your lawyer to see if they are required - it is critical that they be included if they apply to your complex. ■

11 step purchase process

Thinking of buying a Management & Letting Rights business?

This article is aimed at the first-time buyer into the industry. I will now go through a basic staged plan to assist with the process.

This list is by no means exhaustive but a general guide.

Some of you may require a more detailed approach or if you're luckily enough maybe even a simpler approach.

Pre-contract

Step 1: Do your homework

Review as many businesses as you can. Get a feel for the type of complex that ideally suits you. You may want a permanent with minimal office and garden hours or you may be chasing a dollar and wanting to purchase a larger



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short-term complex or perhaps something that has been run down and in need of some TLC.

Step 2: Find out what your budget is

Seek advice from an industry specialist financier or finance broker to determine how much you can borrow and what your budget is.

Step 3: Find the right complex & negotiate price

This will solely depend on your circumstances. Discuss your offer with the applicable agent and hopefully you will have a verbal agreement. It's not uncommon for the offer and acceptance process to take some time.

Step 4: Engage an industry specialist accountant and lawyer

You will need both to assist you with the process, but immediate priority needs to be the establishment of a business ownership structure. This can be either as a sole trader, partnership, company or trust or a combination depending on your circumstances. Taxation and asset protection circumstances generally weigh in heavily with this choice as

they greatly vary. Typically, your accountant will establish the structure then your lawyer will document the contract and advise you on the details.

Post-contract

Step 5: Sign the contract

Generally speaking, the contract will contain three major conditions. First, income verification, second finance and third legal due diligence (which also covers body corporate approval).

Making sure you understand each is crucial. In essence this gives you three get out of jail cards, should you need them, or your circumstances change through the process.

Step 6: Income verification

Your accountant will complete the income verification in

accordance with the contract for sale. This will be for a recent twelve-month period (or projection if off the plan) with the view to verifying an actual net operating profit figure as specified in the contract.

This profit figure is usually the number the vendor's accountant has calculated for the same or similar period. Owner letting agreements are also checked and any variances in letting pool numbers during the verification period are also reported.

Step 7: Obtain finance

Your financier will require a copy of the income verification report and various other documents. Your financier may also require amendments to the body corporate caretaking agreement.

Step 8: Follow your solicitor's advice

Your solicitor will guide you through legal due diligence including obtaining body corporate approval.

This article is aimed at the first-time buyer into the industry



Unconditional contract

Step 9: Statutory and licensing requirements

Make sure all applicable ATO registrations are in place as Australian Business Numbers can take up to 28 days to be processed. OFT licensing can also take longer than expected so make sure this process is well advanced.

Step 10: Record keeping

Careful consideration needs to be given to record keeping for the trust and general bank accounts.

We recommend specialised software be purchased or leased.

Advice from your industry recognised accountant should be sought before just going with "what the vendor was using".

Settlement

Step 11: Hand over process

You will need to negotiate the hand over process with the vendor which commonly is one week prior to and one week following settlement. Try to extract as much knowledge from the vendors as possible during the agreed period. I also recommend having a coffee or similar with the chairman/chairwoman of the body corporate as soon as possible following settlement.

After all the body corporate committee can be your strongest advocate or your worst nightmare.

In summary always stick to and take advice from your industry experienced accountant, financier, solicitor and sales agent and the purchase process should run as smoothly as possible.

Good luck to all those readers looking to purchase sometime soon! ■