

Leasebacks versus letting appointments with guaranteed return



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In recent months I seem to have fielded many calls and emails about leasebacks and other methods of guaranteeing minimum income levels to owners.

A leaseback or some other form of guaranteed owner income (typically a standard letting appointment but with a guaranteed minimum return to the owner) are often used by managers as a way of attracting to the short-term letting pool owners who are concerned about inconsistent or potentially lower returns. These also have the potential to generate significantly greater income for the manager.

For those readers unfamiliar with the term 'leaseback', it is the name given to the leases or tenancy agreements between an owner, as landlord and the manager or a company related to the manager, as tenant under which the tenant can sublet the apartment for short-term letting.

As it is a lease, the owner receives an agreed rent as set out in the lease irrespective of the return achieved from the short-term subletting of the apartment by the manager or related tenant.

There are two basic types of guaranteed return letting appointments. The first is where the manager simply guarantees the owner a minimum net return and the owner benefits from anything above that. The second type is where the manager retains anything received above the guaranteed net return to the owner - usually described as a performance bonus.

I am often asked which one is best - a leaseback or a guaranteed return letting appointment? The answer will

depend on the circumstances. I thought it would be useful to put together a table which both describes and compares the features of each. Readers can consider these in trying to work out what is best for them.

Note that the table below relates to Queensland law and there will be some differences for the other states.

As mentioned above, which one is best will depend on a manager's own circumstances. However, if a leaseback is the preferred option, have regard to the comments above. In particular, do not use an RTA Form 18A, do not have the manager as the tenant and make sure you make disclosure to your other owners in your letting pool. ■

Leaseback	Letting appointment with a guaranteed return
No prescribed form (unless it is intended to register the lease) – note that a leaseback is not a residential tenancy agreement and the RTA Form 18A should not be used. Mahoneys have developed an appropriate form of lease for our clients.	Prescribed form but with special conditions
Generally not assignable to a new manager without landlord consent (but that can be covered in the conditions)	Assignable to a new manager
The existence of even one leaseback requires disclosure to other owners in the letting pool due to conflict of interest	Similar disclosure requirement
Where the manager is the tenant there is the potential that GST is payable on the tariff as the accommodation for the guest is being supplied by the manager in the manager's own right not as agent for an owner	No GST on the tariff – treated like any other letting appointment
Where the manager is the tenant, the tariff paid by guests must not be paid to the manager's trust account but must be paid to the manager's general account	Tariffs go to the manager's trust account like any other letting appointment
To avoid the two problems above, it is important that the tenant not be the manager but that the tenant appoint the manager to act as the tenant's agent to sublet the apartment	
Can be for a fixed term (but in most cases the MIA provisions of the Corporations Act applies and can be terminated on 90 days notice)	Can be terminated on no more than 30 days notice
Potentially locked into ongoing liability despite market downturn (eg Covid)	30 days termination allows manager to avoid ongoing liability
Rent received by the tenant above the payment to the owner is not subject to GST	Rent received by the manager above the payment to the owner (typically the performance bonus) is subject to GST
Seen by some valuers as a liability potentially results in a lower multiplier	More widely accepted by valuers and likely to be valued at a higher multiplier