

## The importance of master keys by Will Kenny

A caretaker's obligation in respect of master keys has become of particular importance in recent years when it comes to buying or selling a business. Most agreements require a caretaker to hold and maintain a register of master keys on behalf of the body corporate and lot owners. While the duty itself is straightforward, we have seen various instances in recent years where managers selling their businesses have become liable for considerable costs (in some circumstances up to tens of thousands of dollars) where master keys have been misplaced or are otherwise unaccounted for.

Traditionally, an outgoing manager will have handed over all keys at settlement without a buyer paying too much attention to whether all keys were in place. It was the assumption of a buyer that whatever keys they received were those originally received and held by the previous manager. Unless the scheme had a designated locksmith with their own key register containing a record of all master keys issued, there would have been no way for a buyer to easily identify if all master keys had been provided to them. It has not been common practice for a buyer to raise any queries and nor for a body corporate to request a reconciliation.

Nowadays, we are often seeing bodies corporate, at the time of an assignment,

ask the outgoing manager for a register of master keys reconciled against the locksmith's register. If it is apparent that there are missing keys issued by the locksmith (even where any number of keys may have been issued to a previous manager) a body corporate will treat this as a serious security concern.

In circumstances where there is no other option but to re-key the building, a body corporate may oblige the outgoing manager to pay the costs involved prior to the completion of a sale. It is a harsh and unfortunate reality for managers who were innocently unaware of what keys they should have received at the time of a purchase.

An outgoing manager may question their liability if they have not lost any master keys during their tenure. A standard term of the assignment is that the body corporate cannot hold the incoming manager liable for any breach of a predecessor. For an outgoing manager, this is the best argument against any potential claim of the body corporate. The difficulty is that a body corporate can use its leverage to withhold consent and insist that the outgoing manager re-key the building before approving an assignment.

Regrettably, this puts the outgoing manager in a difficult position where

they are obliged to accept the body corporate's demands.

What can you do? If there is no locksmith for your scheme with a corresponding register, you should check to see if there was a record of keys handed over by the seller when you took over the business. If not, it is almost impossible to determine whether all keys remain in place. However, you should start your own register of the keys you hold.

If there is a locksmith and it is clear that there are missing keys, you will need to treat the issue carefully. As is the case in any building, it will all depend on the relationship you have with the committee and how cooperative they are in handling the issue. Some bodies corporate will be satisfied if you can demonstrate that the keys you now hold (even though they are not all that may have been issued) are all that were originally provided to you.

If you are intending to sell, you should expect that either the buyer or the committee will ask for a master key reconciliation. The industry standard special conditions now require a seller to provide copies of key registers to a buyer.

If you believe this may be an issue for you and your impending sale, Mahoneys can advise further.

## Accommodation module by Amy O'Donnell

If you are in the management rights industry you will probably be aware that there are commonly 2 modules that could apply to your scheme – the standard module and the accommodation module. To backtrack just a little, a module is a more detailed set of laws that a body corporate must follow in addition to the Act. There are 5 different modules (Standard, Accommodation, Commercial, Small Scheme and Two Lot), however only 2 commonly apply to schemes with management rights.

The most known distinction between the two modules is the term of the management rights agreements. The accommodation module allows the agreements to be for a term of more than 10 years (up to 25 years), whereas in the standard module the agreements can be for a maximum term of 10 years.

The default position (where a scheme has not chosen any other module) is that the standard module applies. For a complex to adopt the accommodation module it must qualify, and to qualify, lots within the scheme need to be “predominantly” accommodation lots (i.e. lots available for rent). It is well established that predominantly means a majority (so more than 50%). To qualify at

the time the scheme is established, it must be intended (by the developer) that at such time the lots be predominantly accommodation lots. That in effect means that the developer must have sold or intends to sell lots predominantly to buyers who propose to rent out their lots.

Once in the accommodation module a complex still qualifies for that module even if lots cease to be predominantly accommodation lots. However it is open to a body corporate at any time to transfer to the standard module by way of special resolution at general meeting.

We have recently seen the impact of an adjudicator’s decision, where a lot owner was able to challenge the module and successfully obtained a ruling by an adjudicator from the Office of the Commissioner for Body Corporate and Community Management that the scheme was, when established, incorrectly placed in the accommodation module and must transfer to the standard module. The consequence of this (i.e. changing to the standard module) was that while the original agreements remained valid (and the term remained at 25 years), when the management rights agreement are assigned in the future,

the term will reduce to 10 years from the assignment.

The potential transfer to the standard module is itself (and always has been) a risk in management rights. What is new is that we have now seen an order that the complex never qualified for the accommodation module (as the lots were not at that time predominantly accommodation lots). This opens up any adoption or change to more scrutiny.

This will usually be most relevant for buyers of management rights off the plan or where the management rights is only a couple of years old. As time passes, the risk decreases (as it becomes more difficult to ascertain the number of accommodation lots at the relevant time).

As always, management rights is a people business and a manager’s poor performance (or perceived poor performance), a hostile committee or disgruntled owners heighten the risk. Where you have a good relationship with the committee, a large letting pool and satisfied lot owners, the risk will be decreased.

If you have any questions about your module, changing modules or your management rights, please reach out to us for specific advice relevant to your circumstances.



### 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

### 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 2023 increase based on Brisbane All Groups CPI would be  $\$100,000 \times 136$  (i.e. the last index figure before the review date – the June 2023 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$124,770.64. 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)