

Preparing to sell

FOR SALE

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Sellers of management rights will be intimately familiar with this course of events. After a number of years of working and building your business you come to the conclusion that it's time to sell. You talk to an agent. The agent lists your business for sale. You wait. For some sellers a buyer is found quickly, and the wait is short lived. For others the wait is longer. In some extreme cases it can be years before a buyer can be found. But finding a buyer is only part of the process.

Next you have to negotiate a price and a contract, then cross your fingers and toes and hope that the buyer's accountant verifies the net operating profit. After that you pray that there are no hidden problems in your caretaking and letting agreements and that the buyer can get finance. When you get to the point where the conditions of verification, legal due diligence and finance are satisfied you breathe a sigh of relief, but you're still not there.

As some sellers can attest, body corporate consent is not as straightforward as it used to be. In

some cases, it can be an arduous process and in a few cases has caused sales to 'fall over'. However, once that final hurdle of body corporate consent has been successfully navigated, the conveyance is done and the sale process is over. You've made it.

The smallest adverse detail that arises during any of the above steps has the potential to cause delays in your sale or in some circumstances for your sale to 'fall over' entirely.

It is impossible of course for sellers to safeguard themselves against all possibilities. However, there are a number of things that you can do to minimise the possibility of significant problems arising during your sale.

Here are a few of the key items that we suggest sellers investigate prior to sale and settlement.

Is a transfer fee payable?

If you sell within two years after becoming the manager, the body corporate is entitled to charge a transfer fee of three percent of the business sale price in year one and two percent in year two. Remember, unless you are selling due to unforeseen hardship, this is a mandatory fee.

What is the net operating profit?

Correctly determining the net operating profit of the business from the outset is the key to having a smooth transition through the financial verification process. We strongly recommend that sellers have their experienced management rights accountant prepare their figures for sale. Having figures prepared by an experienced professional significantly reduces the possibility of problems arising from the buyer's accountant's verification.

Do I have signed letting appointments for all lots in my pool?

Make sure that there are signed letting appointments for all of the lots in your letting pool. These are essential for commissions to be charged to the owners. If there are some missing then you should do everything in your power to get them signed.

Are my letting appointments assignable?

Make sure that all of your letting appointments are assignable. Your POA forms 6 will of course be automatically assignable however if you do have any PAMDA forms 20a then the assignment section should be ticked and initialled by the owner. That being said our strong recommendation is that you wouldn't have any forms 20a as you would have transitioned all owners over to forms 6 some time ago. Whilst old forms 20a might still be valid you are likely to receive objection and probably rejection of them from a buyer's accountant.

How long have I got left on my agreements?

Most buyers (and their banks) look for terms of close to 10 years if the complex is in the Standard Module and around 20 years or more if the complex is in the Accommodation Module. This is critical from a financing point of view so make sure that you are aware of the term remaining and give the correct information to your selling agent.

Have the options in my agreement been exercised correctly?

An issue that has arisen during a

couple of recent transactions is where a manager has forgotten to exercise an option in their agreements. In both instances this issue has completely derailed the transaction as the only way to fix the issue beyond doubt is to have new agreements passed by the body corporate at a general meeting. Accordingly, look through your agreements to ensure all options have been exercised correctly. If you're unsure seek advice from your solicitor.

Is the buyer ready for the committee?

Usually, the caretaking and letting agreements place the onus squarely on the shoulders of the seller to ensure that the committee has received all of the information required to consider an assignment. It is therefore a matter for a seller, and the seller's lawyer, to make sure that they have this information from the buyer.

To ensure that a sale progresses as smoothly as possible through the assignment process, we strongly recommend to all sellers that they, their lawyer and their agent make it clear from the outset what items are required to be given to the body corporate. Ideally, a seller would have all the above information from the buyer before the matter is 'unconditional' as delays in providing this information to the body corporate will inevitably delay settlement.

We have recently published an article about the documents and information a buyer should collate for the purpose of seeking body corporate consent and can provide you with a copy of that article on request.

As they say, proper prior planning prevents poor performance. ■