



ManagementONE

The quarterly newsletter from The Management Rights Lawyers

Know your dates - options, top-ups, variations, extensions? by Amy O'Donnell

Before starting to read this article you should go and check your management rights agreements and make sure you know your option exercise dates and then put those in your diary. If you are not sure then you need to ask us.

When looking for these dates, you will need to look in your caretaking agreement, letting agreement, and in the deeds of variation where you or a previous manager may have added a further option/s to the agreements.

We have explained the importance of knowing your dates in many articles, but we are still seeing many instances where a manager does not properly exercise their option.

The seriousness of this cannot be sugar coated. If you do not properly exercise your option, then your agreements will come to an end.

What is the difference between all of these terms?

1. All management rights agreements are for a certain length of time – that is the term. There is no set term within the industry. Some agreements have an initial term of 25 years, some 10 years, some 5 years, and some 3 years.
2. When you get to the end of the initial term, there may be an option (or options) in your agreements that need to be exercised. An option is an existing clause in your management rights agreements and gives you the right to extend the term. This is called exercising your option, but it can also

sometimes be called extending your agreements. A management rights agreement will commonly include more than one option clause.

3. There will be a time frame within which you need to exercise your option. Very few options are “automatic”. Many require the option to be exercised by giving written notice by a certain date. This is your option exercise date/s.
4. To ensure that you never run out of option clauses (refer to point 2), you need to constantly add new options to your agreement. This is called topping-up your agreements, and, confusingly, can also be called extending your agreements or varying your agreements.

Exercising your options and extending or topping up your agreements are entirely separate tasks. Both need to be attended to in the lifecycle of your management rights agreements.

Exercising your options (that already exist in your agreements)

To exercise your option you will most likely need to give written notice to the body corporate before the end of the then current term. Some clauses include a window of opportunity within which to exercise the option – typically between 6 and 3 months from the end of the term.

Once you know by when your option needs to be exercised, it is just as important to know how. Most agreements will require written notice

to actually be sent by post or hand delivered to the body corporate manager or secretary. Email may not be enough.

Finally, whilst not strictly necessary, it is important that the exercise of your option be documented. It will be needed down the track, to prove that the option was validly exercised and is of effect. We often do this by way of a deed of extension.

Top-Ups or Variations (adding more options)

Failing to add more options to your agreements does not have the same dire consequences of failing to exercise your option, however as time goes on, failure to do so is likely to have an impact on the length of term remaining on the agreements and therefore the saleability (and potentially the value) of your business should you decide to (or need to) sell.

If your scheme is governed by the standard module we suggest that you should be looking at doing this every 2 or 3 years. If your scheme is governed by the accommodation module, then every 5 years is common practice.

A top-up involves varying your management rights agreements to include a new option clause. This needs to be done at a general meeting (usually the AGM) and approved by ordinary resolution by secret ballot – which is simply more votes for than against (from those owners who choose to vote).

Know your dates - options, top-ups, variations, extensions? continued

What dates/information do you need to know?

You need to become familiar with your management rights agreements (this means your agreements and all variations of them) and know:

- the initial term;
- the options (including how many and for what period of time for each);

- how do your option clauses work – how can they be exercised (by post or hand delivery) and what are those dates;
- what is the total term (the initial term plus all available options); and
- when is the body corporate's end of financial year.

You should check to see what your lawyer told you about these dates when

you purchased the business (it will be in your due diligence report) and you should diarise all relevant dates (along with early reminder dates) in a way that is readily accessible to you and cannot be forgotten.

Again, if you do not know, then please ask us. We are more than happy to assist.

Statutory Remuneration Review Process by Ben Secombe

We are constantly surprised by how few people are aware that the Body Corporate and Community Management Act (BCCMA) contains a right to review either:

- (a) the duties to be carried out under a caretaking services contract; or
- (b) the salary paid to the caretaker under such a contract.

This right exists regardless of whether or not there is a similar contractual provision in the contract.

The review mechanism is aimed at (and confined to) new agreements (i.e. the first caretaker appointed by a body corporate) and must be commenced within a strict timeframe stipulated by the BCCMA.

It is often the case that caretaking services contracts are drafted by

developers and have little regard to the actual needs of the scheme. This can result in a lack of alignment between what is really needed for the scheme and what the agreement requires. In those circumstances, a duties review can be a good option for bodies corporate and caretakers alike, in that it will align the duties in the agreement with the needs of the Scheme.

Similarly, there is often a disparity between the salary paid to a caretaker and the duties under the agreement. This is where a salary review is useful.

Mahoneys has assisted many caretakers to take advantage of this mechanism where they are significantly underpaid by reference to the duties required of them. In

Drift Palm Cove Mahoneys secured a salary increase of over \$85,000.00 per annum for the caretaker – which is still the largest increase ever obtained for a caretaker under this review mechanism.

The review process is complex and there is a particular set of conditions to be satisfied before either party can request a review. If the process is not followed strictly, the right to review can be irretrievably lost.

Caretakers of newly established schemes are encouraged to consider this option, especially if their agreement does not contain a regular market review mechanism. The statutory right of review could be your only chance to procure a salary increase for the life of the agreement.



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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.



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