

Leasebacks versus letting appointments with guaranteed return by John Mahoney

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. Below is an updated table I put together some time ago. Readers can consider these in trying to work out what is best for them. Note that table relates to Queensland law and there will be some differences for the other states.

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 2 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	
Excess rent from subletting received by manager is not subject to GST	Most accountants regard the excess received by the manager is subject to GST
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 (e.g. 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 resulting in a lower multiplier	More widely accepted by valuers and likely to be valued at a higher multiplier

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.

Have you checked your appointments recently? by Will Kenny

With the New Year in sight it might be a good time to think about a new year's resolution. For those of you who have not checked your letting appointments in quite some time, an ideal resolution would be to undertake a self-audit. Unfortunately, there are some managers that overlook the importance of ensuring their appointments are valid and compliant. Here are some of our tips and advice.

- Make sure you are using the most recent version of the Form 6 prescribed under the *Property Occupations Act 2014* (Qld). The latest version of the form came into effect on 1 May 2024. Whilst the use of an older version of the appointment after that time may not make the appointment invalid, you should at least ensure that from now on the correct version is used.
- The client's name should always reflect the owner of the property at Part 1 of the Form 6. It should never be assumed that an individual is the owner and appropriate steps should be taken to confirm this. Quite often we see that managers will hold appointments with a client that is mis-described.
- Managers will often include the incorrect details in the licensee section at Part 2. The licensee should be the individual or entity which holds the license, while

the trading name is the registered business name you use (if there is one). This section should never include more than one licensee and should include full particulars such as the company name, ACN or the individual's complete name as it shows on the license. Where a company is the letting agent, it is the company's licence number that should be shown, not that of the licensed director or person in charge.

- The appointment should always be a continuing appointment at Part 4, Section 2 rather than for a fixed period of time and should also include the date of commencement. Section 3 should include the weekly rent for the property or refer to the schedule of fees and charges. It is strictly important to include reference to instructions/conditions at Part 4, Section 4 or otherwise the appointment is likely invalid. Assuming there is an addendum or a schedule to the Form 6, use of the words "See attached addendum/schedule" will suffice.
- The commission at Part 7 should refer to the base rate plus any management fee, letting and re-let fees referred to in the schedule (e.g. 7.5% commission plus GST and other applicable fees). The commission should be described

as being payable at the same time when the owner receives payment of rent.

- For Part 8 it is not necessary to describe all fees, charges and expenses and reference can be made to the schedule. It is important that you properly categorize all fees, charges and expenses as there is a distinct difference between the two (you are entitled to profit from a fee or charge but not an expense). It is best to use the industry adopted addendum/schedule of charges rather than the REIQ schedule. The ARAMA endorsed addendum is on appropriate terms for managers operating both short term and long term letting business.
- Lastly, make sure the appointments are properly signed and dated by you and the client at Part 9. This is quite often the most overlooked aspect of the appointment and it is common for one party to forget to sign.

While our advice might seem basic or self-explanatory, we see that some managers do not have their appointments in order. If you are not sure about what to include at a particular section, it is best to consult a solicitor or accountant. It is vitally important for your appointments to be valid, particularly when it comes time for you to sell.



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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 2024 remuneration based on Brisbane All Groups CPI would be $\$100,000 \times 138.4$ (i.e. the last index figure before the review date – the June 2024 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$126,972.48. Mahoneys has assisted many managers in having their remuneration increased to market level.



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