

# An update on assignments



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**Managers who have bought and sold businesses in recent years can attest to how difficult the assignment process has become. Gone are the days when the assignment was merely a 'tick and flick' and consent of the body corporate was once treated as a foregone conclusion. Nowadays, committees (and strata managers and the lawyers involved) are handling assignments more thoroughly than ever.**

As a seller, it is vitally important to ensure you and your buyer are well prepared for when it comes time to seek consent, even well before your contracts become unconditional. In the current environment, here is what you need to be aware of before notifying your committee.

## What information must your buyer provide?

The industry adopted special conditions for management rights contracts now require a buyer to provide certain information upon the contracts becoming unconditional. As a minimum, this includes the

proposed deed of assignment and motion, a business plan, resumes and references for the directors or key personnel of the buyer, police checks and any other information required under the agreements and at law. You should ensure that the buyer has prepared this information to a high standard so that it is presented well to your committee. We are seeing many buyers now seek professional assistance in drafting and compiling resumes and business plans. If the buyer has prepared this material poorly it will not give your committee much confidence in supporting the assignment.

## What is reasonable for a committee?

We are seeing committees now regularly insist on having buyers undertake a competency assessment carried out by industry specialists. The primary reason for this is to take the burden off the committee in rigorously assessing the buyer's suitability and so that the committee can rely on the findings of the assessment to make an informed decision. These assessments critically analyse a buyer's knowledge in all facets of caretaking and letting which means that prior preparation is key. As a seller it comes as a further cost of the assignment which is "reasonably incurred". Despite the additional cost and complexity of the assessment,

it is not unreasonable for a committee to ask for it.

If your buyer has previously owned or currently owns another business, you can expect that the committee will ask for references from either a committee member or the strata manager for those schemes. Inevitably, some buyers will be reluctant to do so due to the confidentiality of the purchase and the relationships with the individuals involved at those other schemes. Again, it is not unreasonable for a committee to insist on these references and refusing to cooperate will only raise suspicion. You should ensure that your buyer is candid in disclosing the full background of their experience in management rights and that they demonstrate that to your committee.

Buyers that deliberately withhold this information will only cause complications for or even the loss of your sale.

## What can you do to make the process easier?

Make sure that your buyers have their resumes, business plans and references ready (or at least working drafts) at the very outset. If in doubt about your buyers, you may want to see these even before contracts are executed. If what they have is not up to scratch, flag this with them immediately. If you have a selling agent involved,

they should be working with the buyers to review the material before it is provided for formal submission. Generally, your committee will want this information to be as detailed as possible - there is no such thing as being over prepared!

In our experience, the difficulty of your assignment will depend on the relationship with your committee. If hostility exists, more often than not a committee will either go out of their way to complicate or delay the assignment. This is why it is important to always maintain a good relationship with your committee. Even if you are not planning to sell in the immediate future, you will always need their assistance in facilitating a sale when the time comes. Unsurprisingly, we see that high performing managers who have good relationships with their committee will always get their support. Those managers can ensure that the timeframes of the assignment will be met and can even recommend appropriate legal representation to their committee.

Whether we like it or not, assignments are now much tougher than they were. It is indicative of how the industry has changed in recent years. Committees are much more careful in who they approve and are more aware of their rights and obligations when it comes to an assignment. Ultimately, it is to prevent a body corporate from becoming stuck with an underperforming manager and facing the difficulties of trying to remove them. If you keep your committee onside and perform your duties well, you will find that your assignment will be much more streamlined and uncomplicated. ■

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