



Complete guide to assigning management rights agreements



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Introduction

The process of a caretaking service contractor selling their management rights business is usually done by way of a "transfer" which is commonly referred to as an assignment.

As the body corporate is a party to the agreement it has to consent to the transfer. The process for requiring consent gives the body corporate a chance to ensure the new caretaker can perform the duties under that agreement.

Despite the body corporate being a party to the management rights agreements they are usually only involved toward the end of the assignment process.

If the assignment process is not managed carefully, the rights and obligations of the body corporate can be materially affected.

In this guide we discuss:

- the assignment process;
- what rights the body corporate has;
- who pays the body corporate's costs of the assignment; and
- how Mahoneys can help bodies corporate with the assignment of management rights agreements.

Mahoneys is recognised as one of Australia's leading body corporate law firms – having recently been awarded "Strata Law Firm of the Year" at the Strata Community Association (Qld) awards.

Our dedicated Body Corporate team is made up of industry-leading lawyers with experience in providing body corporate advice, transaction support and dispute resolution services.

Feel free to contact us if you have any questions about assigning management rights agreements.

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What are the assignment stages?

The sale of a management rights business usually involves the following stages:

1. advertising the business for sale;
2. signing contracts (which are usually subject to a number of conditions);
3. accounting due diligence (i.e. checking the net profit of the business);
4. legal due diligence (i.e. checking the validity of the management rights agreements (Agreements));
5. finance;
6. body corporate consent; and
7. settlement.

It is ordinarily the case that it is only at step 6 that the body corporate will become involved.

Why is the body corporate involved?

Because the body corporate is a party to the Agreements the body corporate's consent is required for the Agreements to be transferred to the buyer.

How is consent provided?

Consent is usually provided by the committee within 30 days of being provided with all of the relevant material needed to make a decision.

This usually involves passing a committee motion and entering into a deed. The terms of the deed are important and can affect the parties' legal rights.

What can the body corporate do as part of the assignment?

The body corporate can:

- ask for an interview with, or meet, the buyer;
- ask questions of the buyer or for further information related to the assignment; and
- if appropriate, ask the buyer to carry out further training.

What information should be provided to the body corporate?

The body corporate is entitled to consider, at a minimum, the following information:

- character of the buyer and any related persons;
- financial standing of the buyer;
- proposed terms of the transfer;
- competence, qualifications and experience of the buyer;
- anything else the Agreements provide for.

The interview questions should relate to this information.

Usually this will include resumes, references, credit checks, police checks, qualifications, details of the buyer's financial position, details of any training, the proposed terms of the transfer and anything else the Agreements provide for.

How is the buyer's financial standing proven?

The buyer's financial standing can be proven by a number of means. This can include any of the following:

- provision of statements of assets and liabilities;
- confirmation that the buyer is purchasing the business without the involvement of a bank (if the buyer can purchase the business without a loan, this would show that they are of sufficient financial standing to operate the business); or
- confirmation that the buyer has obtained finance from a bank to complete the purchase of the business (if the buyer can pass the credit requirements of a bank, this would show that they are of sufficient financial standing to operate the business).

Is the information provided to the body corporate kept confidential?

No.

The body corporate must keep all documents provided to it on the body corporate record. Interested persons have the right to inspect the body corporate record subject only to the material being defamatory or subject to legal professional privilege.

Is there any fee payable by the seller?

If the sale of the business settles, the seller must pay the:

- body corporate's reasonable costs related to the application for the body corporate's consent – provided that the Body Corporate insists on this as a condition of the consent; and
- transfer fee (this is only payable if the consent to the assignment of the Agreements is given within 2 years of the seller buying the management rights business).

What can't the body corporate do as part of the assignment?

The body corporate cannot:

- unreasonably delay or withhold consent to the assignment;
- receive a fee or consideration for approving the transfer other than reimbursement of its costs or the transfer fee (if applicable); or
- leverage the request for consent to renegotiate the management rights agreements – this can be asked of the seller and buyer (or by the seller and buyer) but cannot be insisted upon.

Should the body corporate get legal advice on the assignment?

Yes.

The body corporate will be asked to sign legal documents that may affect its rights and obligations. For example - the body corporate may be asked to confirm something that is not legally correct or that requires general meeting (not committee) authorisation.

It is important that the body corporate obtains advice from a body corporate lawyer experienced in management rights transactions to protect its legal position.

Mahoneys regularly acts for bodies corporate on assignment requests and has a dedicated and experienced team for these types of matters.

About the firm

Mahoneys is an independent law firm offering a range of commercial advice, transaction support, and dispute resolution services. With offices in Brisbane and the Gold Coast, we have a dedicated team of lawyers who specialise in body corporate and strata law.

We have a long history of acting for bodies corporate - our work includes acting for lot owners and bodies corporate on all matters relating to the Body Corporate and Community Management Act and associated legislation – including in the following areas:

- Management rights assignments and variations
- Common property subdivision and sales
- General disputes and advice
- Community management statements
- By-law enforcement and by-law reviews
- Selling schemes to developers
- Caretaker performance issues
- Debt and levy recovery
- Lot entitlement issues
- Building defect disputes
- Building management statements
- Laan access notices
- Defamation
- Neighbouring development issues

Mahoneys was named "Law Firm of the Year" at the most recent Strata Community Association (QLD) awards.

About the Team

A key to our success has been the quality of our team and our unwavering commitment to providing market leading legal services. Our dedicated body corporate team is made up of leading industry lawyers, led by 2 experienced partners:



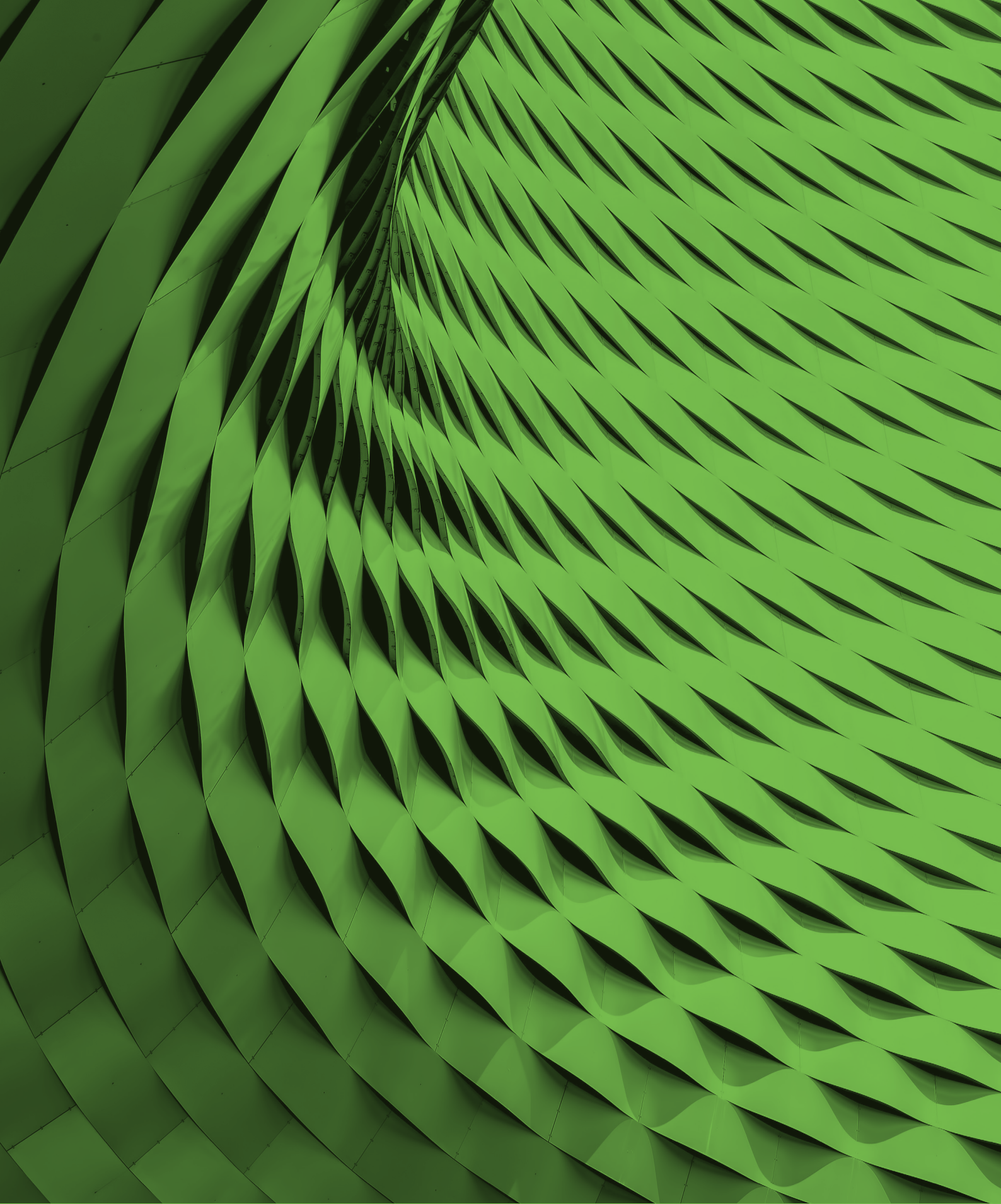
Todd Garsden who heads up Mahoneys' body corporate practice is an industry-leading body corporate lawyer who predominately acts for bodies corporate, body corporate managers and lot owners on all matters affecting bodies corporate.



Ben Seccombe who heads up the Mahoneys' Dispute Resolution team, is a nationally recognised litigator with significant experience advising bodies corporate including on contract issues between resident manager and body corporate, by-laws, building and construction (including defect management), statutory compliance and insurance. Ben also has significant experience helping bodies corporates terminate and sell body corporate schemes to developers.

Want to know more?

To receive updates on body corporate matters, you can visit our dedicated body corporate page www.mahoneys.com.au/industries/bodies-corporate-strata, follow us on LinkedIn www.linkedin.com/company/mahoneys or sign up to our body corporate focused newsletter www.mahoneys.com.au/subscribe.



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