



ManagementONE

The quarterly newsletter from The Management Rights Lawyers

Preparing to Sell by Matthew Manz

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 2 years after becoming the manager, the body corporate is entitled to charge a transfer fee of 3% of the business sale price in year 1 and 2% in year 2. 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 of 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.

How long is this going to take? by Matthew Manz

How long are they going to take?

What more do they need?

Recently I've had quite a number of questions along the lines of the above from clients who are selling/buying management rights businesses.

What are they referring to?

The process of obtaining a Body corporate's consent to an assignment.

There has been a trend over the past 12-24 months where the point between signing a contract for a sale/purchase of management rights and the eventual settlement date is taking longer and longer. There are often other contributing issues but the main driver is the length of time it takes to get the consent of the body corporate.

Why is this the case?

- There are a lot of people involved - the buyer, the seller, their respective solicitors, the body corporate manager, members of the committee, the body corporate solicitor and sometimes a 3rd party company engaged to interview and/or test the buyer. To get that many people on the same page and to agree takes time;
- Lot owners and committees are more aware of their rights under the Body Corporate and Community Management Act and the caretaking and letting agreements and are exercising those rights;
- Bodies corporate and their solicitors are requesting significantly more information

from buyers than ever before (sometimes without real justification);

- Buyers and sellers are not organized and adequately prepared;
- Some committees perceive there to be a manager skills gap, particularly in relation to communication and a lack of any experience applicable to running a management rights business. Unfortunately in a number of instances this view has been justified; and
- Bodies corporate have previously experienced poor managers and/or have been advised of poor managers by their body corporate manager or body corporate solicitor. Again, and unfortunately, this view has been justified.

Particularly in light of points 4 and 5 it has meant that committees are more cautious when considering assignments, are asking for significantly more information and oftentimes when the applicant has little to no experience a requirement that the applicant undertake appropriate training, which, as you can imagine takes time.

What can we do about it?

- Sellers, their lawyers and their agents must make it clear to the buyer from the outset what items are required to be given to the body corporate and when those items need to be provided. This would ideally be before the finance condition is satisfied (not 3 weeks after);
- Sellers take into account the skills and experience of the potential buyer in

addition to their monetary offer. It just may be that a smoother body corporate consent process due to the buyer having sufficient skills will save on time, money and angst when compared to a failed or significantly drawn out body corporate consent process; and

- The written application is the first thing a committee will see. Whether consciously or sub-consciously they will make judgments about the buyer based on that initial written application. As such I strongly suggest that buyers put their best foot forward and put together a high class application which includes all of the elements and supporting documents required under both the caretaking and letting agreements and the legislation. If it is thorough and professional then the committee's initial judgment is likely to be positive. In some cases it may be advisable for buyers to engage the assistance of a third party that specializes in putting such applications together – they are out there.

The take away?

We can't control what the committee, the body corporate manager or the body corporate solicitor do. What we can control is the quality of a buyer's application and its timing. I strongly believe that improvements in these areas alone will lessen the time between the contract date and the settlement date and make the consent process less angst ridden and smoother.



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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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