



SykesPearsonMiller

EXPERIENCE INTEGRITY RESULTS

BUYING AND SELLING MANAGEMENT RIGHTS

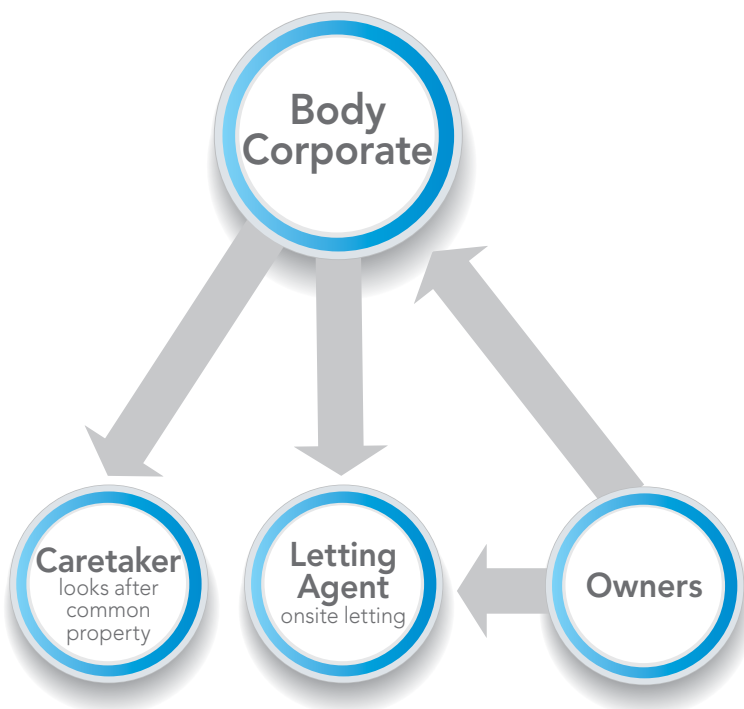


WHAT ARE MANAGEMENT RIGHTS?

Management Rights is the term used to describe the business behind the operation of a strata titled property. Strata titled properties consist of the lots in the scheme (usually owned by individual owners) and common areas such as carparking, driveways, pool, gardens, stairways, BBQ Area, tennis courts and gyms.

Put simply, management rights is the business of on-site caretaking of the common areas and on-site letting (i.e. the letting rights for investor owned properties within a body corporate). The body corporate engages a caretaker to look after the common property. They also appoint that same person to conduct onsite letting. Owners in the scheme appoint the letting agent to let their unit (see diagram).

Most management rights also involve the purchase of a manager's residence and the rights to use a reception area.



“Management Rights businesses can have their pitfalls which can be confusing and overwhelming. Getting the right team to assist you in this specialised area of law is important.”

HOW DO MANAGEMENT RIGHTS WORK?

- You get paid from the Body Corporate to look after the common areas of the property - that is called the caretaking agreement. This is an agreement where a person (or company) is appointed to carry out the cleaning and maintenance duties of the body corporate for a fee.
- You earn a percentage commission of the rental income from units. The letting agreement is an agreement where a person (or company) is authorised to conduct a letting agency business within the scheme. You will have agreements with each owner to let their units for a commission or fee. The percentage can be negotiated.
- Other ways you can earn income from management rights include: cleaning charges, linen hire, telephone and internet usage, sporting equipment hire and tour and hire car bookings.

THE LAWYERS ROLE IN MANAGEMENT RIGHTS

The SPM Law - Sykes Pearson Miller Management Rights team, headed by Legal Practitioner Director Michael Sobey, can support you throughout the whole process so you can be confident the transaction will be as smooth as possible. We understand that this can sometimes be the first time you are purchasing a business and will need lots of easy to understand explanation.

Practically all management rights contracts are subject to legal due diligence provisions and so a specialist management rights solicitor is a critical component in the sale or purchase of management rights.

Our role doesn't finish once you settle your management rights business purchase. You will need our assistance for things like exercising an option, seeking variations or extending terms.



Michael Sobey
Director
msobey@spmlaw.com.au

WHAT WE DO:

- **Purchase**
Pre contract structuring including
GST advice
Due Diligence
Body Corporate approval
- **For Sale**
Check balance term and validity
Body Corporate approval
- **Post Settlement top ups**

“Having dealt with hundreds of Management Rights clients from Darwin to Airlie Beach to the Sunshine Coast, Brisbane, the Gold Coast and even as far as Fiji, SPM Law are here to provide you with comprehensive, easy to understand advice.”

We will be involved through the whole process and liaise with your broker, accountant and financier to ensure full compliance.

Once the contract is signed, we will conduct legal due diligence which involves looking through the management agreements, by laws and body corporate minutes to identify potential issues.

This normally takes about 21 days then we will organise the transfer of the Management Rights, deal with body corporate issues and also conduct the conveyancing for the managers residence.



MANAGEMENT RIGHTS PROCESS



“ We have been overwhelmed by the professionalism of the entire SPM Law Team. They have assisted us in 3 transactions now and our 1st being our Management Rights Business which was an exceptionally smooth transaction, they have also handled a purchase and a professional business agreement. We highly recommend the entire team. Thank you for all your assistance.”

Bill and Andrea Stokje

FREQUENTLY ASKED QUESTIONS AND IMPORTANT POINTS

Do I have the right legal structure?

The right structure for you will depend on your individual circumstances (if you have other businesses, assets or income streams you may require a specific asset protection or tax effectiveness strategy). It is common for Management Rights businesses to be conducted using a corporate trustee (a company which conducts the business and holds its assets as trustee for a trust).

What is the right “module”?

The regulation module should be selected to best suit the complex. From the point of view of the Manager, the Accommodation Module is attractive in that it allows for a maximum term of 25 years as opposed to the 10 year maximum in the Standard Module. Having a longer term available under your agreements can be an attractive selling point for future buyers however, many older schemes are still subject to the Standard Module

How many years left on the agreements? How long is the term?

The number of years remaining under the current term of the Management Rights contracts will depend on when the last option to renew the agreements for a further term was exercised. It is common for the agreements to be extended by five years at a time (the maximum allowed) however shorter extensions are also used.

How many in the letting pool? Who isn't in the letting pool?

Lot owners must consent to join the letting pool and can withdraw from the pool upon giving sufficient notice as set out in the Form 6 – Letting Appointment. The number of owners in the letting pool of a complex will add value to a Management Rights business as this will add to the annual income of the letting half of the business (provided there are enough guests coming to stay in the letting pool units!).

Does the Body Corporate have to extend my agreements past the current options for renewal?

The short answer is no - the body corporate is under no obligation to grant you continued extensions of your agreements. It is important to stay mindful that the value of your business is tied to the satisfaction of your customers (the lot owners). The happier the lot owners are with your work the more likely you are to easily obtain extensions and any other amendments you may require to your agreements. When a body corporate finds a good manager they will want to keep them and will happily grant further options for renewal.

Does the Managed Investments Act apply?

The Managed Investment provisions now located in the Corporations Act 2001 (Cth) (formerly found in the Managed Investments Act 1998 (Cth)) are a source of much confusion when it comes to strata schemes letting pools. The Australian Security and Investment Commission (“ASIC”) has taken the view that the provisions will apply to Management Rights letting pools however this has not been significantly tested by the courts. Fortunately, ASIC recognises that the disclosure and reporting obligations which are part of the Managed Investment laws are too onerous for letting pool operators and has granted exemptions from these provisions when operators of letting pools comply with a series of conditions. If it sounds a little messy - unfortunately that is because it is, however we can guide you through compliance to ensure you take advantage of ASIC’s exemption.





UNDERSTANDING THE LINGO

The language used in the Management rights process can be confusing. Here are some common terms and their definitions

Strata Titled - refers to the situation where land, a building or a complex is divided into a number of smaller areas or "lots" (most often townhouses or units) each capable of having a separate legal owner.

Lots - the divided areas within a community titles scheme that belong to the individual owners.

Owner Occupiers – owners that live in their unit or "lot" permanently.

Lease Back – This term describes an arrangement where lot owners purchase units for investment and then grant leases back to Managers for a fixed term with an agreed flat income to the lot owner. This provides good security of income for the lot owner and in good economic conditions allows the Manager to keep any profit over and above the agreed payments to the lot owner. The Manager is backing themselves to out perform the permanent rental income of a 52 week tenant using frequent short term letting at a higher price. This arrangement can provide certainty to a Manager as they know the unit will not be removed from the letting pool during the term of the lease.

Lockup – As the name suggests, these are units which lot owners elect to leave unattended and locked-up when the owners are not occupying them. They do not form part of the letting pool.

Due Diligence – where your experienced management rights lawyer correctly guides the buyer through the legalities of buying management rights. The lawyer will, during this process, identify issues that may come back to bite a buyer if they are not identified and corrected at the time of purchase. Of particular relevance is the inspection of body corporate records undertaken by a specialist search agent and reviewed by your lawyer. Allow a minimum 21 days for the legal due diligence to be completed.

Body Corporate - The legal term for the entity created to control and administer the common property of the building and other collective responsibilities of the lot owners. All lot owners are members of the Body Corporate and they nominate a committee from their ranks to make the more day to day decisions on their behalf.

CMS - Community Management Statement, the document that contains the by-laws, a description of the real property in the scheme as well as the lot entitlements for the lots in the scheme. This document also identifies any exclusive use areas attaching to lots.

By-Laws - the rules of the Body Corporate relating to the use of the lots and common property. They define what the Body Corporate can and can't do. The By-Laws apply to all lot owners and their guests.

CTS - Community Title Scheme – this is what is created when a single property title(owned by the developer) is subdivided into separate titles or lots and common property to be governed by the terms of the Community Management Statement.

RUM – Resident Unit Manager – essentially the “on-site manager”, the person who owns and operates a Management Rights Business and owns a lot within the complex as part of that agreement.

Scheme – This term is used to refer to Community Titles Scheme, in the context of strata title this term is generally used to describe a structure where two or more lots, buildings or even smaller schemes (where a layered arrangement exists) share ownership of, and responsibility for, common property and are governed by an agreed set of rules.

Modules – These are the specific sets of Regulations which apply to the different types of Community Title Schemes. These include;

- **Standard** – This is the basic Regulation Module which provides, among other things, for a maximum 10 year term on the Management Rights Agreements (including options). This is the default Regulation Module that was introduced and applied to all building in place before the BCCMA legislation was introduced.
- **Accommodation** – This is the most common Regulation Module among newly constructed management rights schemes and allows for a maximum term of 25 years (including options).
- **Commercial / Small Schemes / Specified Two-Lot** – These three Regulations Modules are rarely seen in schemes capable of supporting a Management Rights business.

MIA – Managed Investment Act - refers to the Managed Investments Act 1998 (Cth) provisions which are now located in the Corporations Act and govern the operation of arrangements where a group of people pool their money under the control of another for investment return.

Forced Sale Provisions – these are the provisions which ASIC require to be included in the Letting Agent's Letting Appointments (the agreement with owners authorising the agent to rent out that owner's unit) in order to receive exemption from some of the onerous disclosure obligations in the Managed Investment Schemes provisions in the Corporations Act 2001 (Cth) (formerly located in the Managed Investments Act).

Financial Verifications – the process during which a potential Buyer's accountant will inspect the books of the Seller's Management Rights business to assess whether the profitability of the Business is in line with the amount disclosed to the Buyer. This occurs early on in the process so that other costs are kept to a minimum until the Buyer is satisfied in regards to the figures and happy to proceed with purchase.





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EXPERIENCE INTEGRITY RESULTS

Buying and Selling Management Rights can be more complicated than other businesses so it's important to seek advice from expert professionals.

Sykes Pearson Miller has decades of Management Rights legal experience and understand all aspects of the process.

Before you decide on who to use as your legal advisers talk to us first for a no obligation free 30 minute consultation and we will ensure you are on the right track. We are happy to have our meetings via skype, telephone or face to face. Whatever suits you best.

Experts in Management Rights

Noosa

Corner Noosa Parade and Quamby Place

P 07 5440 4800

E info@spmlaw.com.au www.spmlaw.com.au

Disclaimer: The information contained in this brochure is general in content and does not comprehensively set out the law in relation to management rights. Although the information is current at the time of printing it should not be relied upon in substitution for professional legal advice. We strongly recommend that you obtain professional legal advice given no management rights transaction is the same. We expressly exclude all liability, including any liability from negligence in relation to this brochure.