

# Management Rights

Purchaser's Handbook

**Pevy**Lawyers  
Management Rights & Motels



**Pevy Lawyers** is a dedicated accommodation industry law practice which brings together big firm experience with small outfit accessibility, responsiveness and service. Led by managing director Trent Addison Pevy, Pevy Lawyers has the capacity and understanding to resolve the complex legal issues faced by both small businesses and large corporates alike within the accommodation sector.

Courtesy of its narrow focus, Pevy Lawyers has established itself as one of the top management rights and motel/caravan park law firms in Australia both in terms of the volume and the value of transactions handled. As a consequence, clients can be assured they are receiving the most reliable, up to date and specialised advice and solutions in their industry.

As leaders in such a niche field, the firm is relationship driven – a mantra which echoes through all its dealings with its accommodation industry clients. Trent and his team of lawyers and paralegals seek not just to act for clients, but to partner with them in achieving their business and personal goals, through the delivery of dynamic and valuable legal services across all aspects of purchasing, selling or operating management rights.

# CONTENTS

<b>A</b>	<b>ABOUT PEVY LAWYERS .....</b>	<b>1</b>
<b>B</b>	<b>WHAT ARE MANAGEMENT RIGHTS? .....</b>	<b>3</b>
<b>C</b>	<b>FIRST THINGS FIRST .....</b>	<b>7</b>
<b>D</b>	<b>LOCATING YOUR PROPERTY AND GOING TO CONTRACT ...</b>	<b>8</b>
<b>E</b>	<b>THE KEY CONDITIONS .....</b>	<b>9</b>
<b>F</b>	<b>OTHER MATTERS PRIOR TO SETTLEMENT .....</b>	<b>14</b>
<b>G</b>	<b>SETTLEMENT .....</b>	<b>15</b>
	<b>FINAL THOUGHTS .....</b>	<b>15</b>





### A About Pevy Lawyers

The breadth and impact of regulatory change in the management rights industry places a heavy importance on engaging a reliable and connected legal advisor with specialised experience in this area.

As experts in this field, Pevy Lawyers understand the commercial drivers of this industry to enable it to provide comprehensive and business focused advice for your acquisition, sale or ongoing operation of your management rights business. Whether you operate, or are considering operating a management rights, we are well placed to ensure you receive a personalised, accurate and value adding service.

Our management rights services include:

- Acting in all aspects of the sale and purchase of existing or off the plan permanent, holiday, corporate let and student accommodation management rights, Australia wide;
- Offering one of the most comprehensive legal due diligence reports in the industry;
- Advising on day to day operational matters, including Code of Conduct queries and drafting of letting appointment and leaseback special conditions and terms;
- Devising and implementing strategies in dealing with bodies corporate and other stakeholders;
- Negotiating, advising on and acting for management rights partnerships and consortiums;
- Preparation of exercise of option and renewal of agreement documentation;
- Drafting motions and deeds of variation for your agreements including term 'top ups';
- Attending and advising at body corporate meetings;
- Advising developers on the creation and sale of management rights for their development;
- Advice with respect to general structuring matters in consultation with our industry partners to ensure maximum profitability and asset protection;
- Dispute resolution, strategy and responding to remedial action and other breach notices.

#### OUR APPROACH

**Meeting with you at your location or in our offices** - Where geography permits, we welcome the opportunity to come to you to discuss your matter.

**Dealing with the same, experienced person start through to finish** - Pevy Lawyers enables you to deal directly with those who have had a decade or more of first hand experience in their fields, not with a junior paralegal or lawyer learning the ropes. You can be assured the same lawyer giving you the fee estimate at the start of your matter will be the one assisting you right through to settlement. How could we truly know and understand your business otherwise?

**Proactive, not reactive, advice** - As we only practice in the areas of our specialisation, we can predict and prepare you for potential problems or situations long before they arise. Setting us apart from other lawyers, this foresight can dramatically reduce the ultimate cost of your matter and increase the likelihood of it proceeding. With strategies, relationships and industry contacts that only come from having seen it many times before, you can rest easy knowing we are proactively challenging ourselves to remain one step ahead.

**Competitive and flexible charging structures where you're not the only one risking a blow out on costs.** If there is one pet hate amongst clients, it must surely be getting quoted one thing, and being invoiced another. Sure, occasionally factors beyond your control, or the control of your lawyer, mean the original fee estimate needs to be revised. But should your lawyer really be rewarded for inefficiency or inexperience? We are the only firm in our practice areas who is openly prepared to share the risk of fees above our initial estimates with you on a 50/50 basis - meaning those unnecessary paper wars and point scoring between lawyers will never be our profit drivers.

**Doing away with the 'charge for everything' mentality.** Forget about dreading the trip to the mailbox at the end of the month - you'll never receive an invoice from Pevy Lawyers without having discussed it with us first. We pride ourselves on our openness and exceptional client care which is why if the unexpected happens, any necessary variation in the fee estimate will be discussed immediately with you as your matter progresses - not just when it comes time for you to open your cheque book.

**7 days a week accessibility** - For when that pressing concern just can't wait until Monday morning, we provide dedicated after hours support.

**Consistent, exceptional service and advice** - Our business is very much referral dependent. The greatest compliment you can bestow upon us is a referral. We appreciate this will not occur without providing you with consistent and exceptional service and advice - without the need for you having to constantly send follow up emails or wait for a return phone call.

### ABOUT MANAGING DIRECTOR, TRENT PEVY

In his 17 years of private practice, Trent has specialised entirely in property related matters, and in particular the accommodation industry. His years of diverse experience have seen him work in the world's largest law firm, where he represented several Fortune 500 companies, Barclays Bank and the English Government in complex property transactions. Prior to the formation of Pevy Lawyers, Trent was also an integral member of a leading property law firm in Brisbane and the Gold Coast, where he acted for major property players in transactional and advisory matters, again with particular focus in the accommodation industry sector.

Today, Trent is amongst a rare handful of top accommodation industry recognised lawyers in the country, having acted on over 2000 management rights transactions throughout Queensland, New South Wales and other states of Australia. He arguably acts for more new clientele to the management rights industry than any other lawyer.

Trent regularly presents seminars to those new to the industry in both Australia and overseas. He holds a Bachelor of Laws and is an admitted solicitor of the Supreme Court of Queensland, Supreme Court of New South Wales and the Supreme Court of England and Wales. He is also a current member of the Queensland Law Society and the Australian Resident Accommodation Managers' Association.

Yours sincerely,



Trent Pevy  
Managing Director  
Pevy Lawyers



### B WHAT ARE MANAGEMENT RIGHTS?

So you would like to buy a management rights? But what exactly are they? To grasp management rights, you first need to understand the environment within which they operate.

#### **STRATA LIVING**

Living in unit complexes and high rise towers has become more and more popular in recent decades. This has been in response to the shortage of developed land, the lack of affordability of bigger housing, and the trend towards living in cities rather than rural locations.

Governments over time have welcomed this phenomenon and enacted legislation to accommodate it. And so arose the birth of strata living, with legal frameworks set out for developers who wished to subdivide blocks of land to construct higher density unit blocks and townhouses.

#### **Strata Schemes and Lots**

A strata scheme normally starts with a single block of land. This block is then subdivided by the developer into further lots. Depending on the size of the original parcel of land, this could be anywhere from two lots (for example, a duplex home) to hundreds of individual lots either on the ground (townhouses) or in the air (high rise tower). Provided the area is accompanied by common property, this is then known as a strata scheme. The lots are sold to individual owners just like normal property, albeit subject to by-laws (discussed further).

#### **Common Property**

Higher density living means that not every resident can have their own pool, garage or back yard as may be the case on traditional home sites. Instead, owners in a strata scheme may share a pool and other recreational facilities. This is known as common property, and is a key feature of any strata scheme.

In a townhouse complex, common property shared by all residents will generally include internal community driveways and approaches, pools, tennis courts, BBQ areas and lawn areas. In a high rise building, common property will normally feature basement car park areas, recreational areas, lifts, hallways, corridors and rooftops.

The most important principle of common property is that it is available for use by all owners.

#### **Body Corporate (Owners' Corporation)**

All strata schemes include the creation of a legal entity known as a body corporate (which can also be known as an Owners' Corporation in some jurisdictions). Ownership of a lot within the strata scheme entitles membership to the body corporate. Common property is held in the name of the body corporate.

A body corporate is very similar to a company. Imagine each of the lot owners are shareholders, with their shareholding determined by the size or demand their lot places on the body corporate. Just like a company, each year the body corporate holds an Annual General Meeting (AGM), where a committee is selected. Like a board of directors, the committee's role is to act on behalf of all owners (shareholders) to make decisions on minor matters throughout the year to ensure the body corporate's good management. Some important decisions cannot be made by the committee – instead they must be reserved for vote by all owners at a general meeting. If this cannot wait until the AGM, an extraordinary general meeting (EGM) can be called.

The body corporate is a separate legal entity. It will have bank accounts, can enter into contracts, and can sue and be sued. One contract a body corporate will normally enter into is a caretaking and letting contract with a management rights operator. These contracts provide the basis for a management rights business.

The body corporate is funded by levies paid by each lot owner. These levies are split into administration fund levies (for routine annual expenditure such as insurance, electricity and paying the caretaker) and sinking fund levies (for long term capital replacement and repairs of body corporate assets such as lifts, recreational facilities and the building structure itself).

### By-laws

Similar to the constitution of a company, the body corporate will feature its own rules known as by-laws. These rules help maintain harmony throughout the strata scheme. Common by-laws you can expect to see relate to pets, parking rights, noise, the use of recreational facilities and items necessary to maintain uniformity of lots within the complex.

By-laws can also include special rights granted over common property. For example, lot owners may be granted exclusive use of a numbered car space, a courtyard area (in townhouse complexes) or a storage area.

The committee cannot alter by-laws. They can only be modified by a vote by all owners at general meeting.

### Strata manager / Body Corporate manager

To help manage the body corporate's administrative affairs, the body corporate will normally appoint a strata manager on a one to three year contract. The strata manager's role is to take minutes at meetings, send out notices to owners, collect levies and administer the bank accounts of the body corporate. Unlike management rights, a strata manager may act for 50 different bodies corporate. This has given rise to specialist strata management companies who tender for the secretarial and administrative work for bodies corporate throughout the country. As a management rights operator, it is helpful to have a good working relationship with the strata manager.

## MANAGEMENT RIGHTS

Management rights are the business of caretaking the common property in the strata scheme and the provision of letting services for investor owned lots in the complex. These rights are almost always accompanied by the purchase of a manager's residence and a right to use an office / reception area in the building.

### Agreements

The right to provide caretaking and letting services is secured by a long term contract between the body corporate and the management rights operator. These agreements could be as long as 25 years. For financing purposes, they are almost always at least 7 years or longer. Of course, a management rights operator is not expected to stay at the one building for this length of time, which is why agreements can be assigned from one management rights operator to another. When you are buying management rights, you are literally taking an assignment of the seller's caretaking and letting agreements in place with the body corporate.

Because of this length of term, the body corporate has the security of knowing it has dedicated management in place. From an operator's perspective, they have an asset with long term value which is recognised by the banks as a good investment and hence easy to borrow against compared to many other business types.

As you would expect, management rights operators' businesses live and die by the quality of their agreements with the body corporate. This is why they are very carefully reviewed by a purchaser's lawyer to ensure that they will ensure continuity of income and be attractive in the future to a potential purchaser.





## B WHAT ARE MANAGEMENT RIGHTS?

### Income

**Caretaking services** are provided to the body corporate in the return for the payment of a fixed salary. The caretaking duties are set out in the caretaking agreement and can include garden maintenance duties, cleaning of hall ways and corridors, pool maintenance, supervision of contractors, minor repairs and monitoring the observance of by-laws by residents. The fixed caretaking salary typically increases each year in line with the rise in the cost of living (determined by the government consumer price index (CPI) statistic). The salary is normally paid monthly in arrears from the body corporate's administration fund.

**Letting services** from onsite are authorised by the body corporate. However the income is not generated from the body corporate but from commissions charged to those lot owners who choose to use your letting service. Accordingly, letting services are only directly relevant to investor owned lots, rather than those lots occupied by owners themselves. A big building that is predominantly full of owner occupiers may therefore have a low letting income (albeit accompanied by a large caretaking income). On the other hand, a small building that is entirely investor owned may have a big letting income, in comparison to the caretaking salary. Aside from commission on rental or room rates, letting income also includes re-let fees (permanent let complexes) and linen replacement and apartment servicing (holiday let complexes).

**Ancillary income** is also available to management rights operators. For permanent complexes, this could include backyard maintenance for owners, end of tenancy bond cleans, and repairs and maintenance. For holiday and short term complexes, this could include repairs and maintenance, commissions on tourist attraction sales, surf board rental and credit card merchant fees.

### Caretaking – supervisory or 'do all'?

Most caretaking agreements require the management rights operator to carry out the duties set out within it personally. In such instances, if the operator wants to engage contractors to carry out the duties then they would be at the operator's cost.

Other agreements only require the operator to supervise contractors engaged by the body corporate to perform the duties. Obviously a 'do all' agreement will tend to be for a much higher salary than a supervisory only arrangement. This is nevertheless an important consideration when looking at what type of management rights to purchase.

### Letting appointments

Whilst the caretaking income is secured via a single contract with the body corporate, letting income is documented by not only the letting agreement with the body corporate. The letting aspect of the business also relies upon contracts between the operator and each investor that chooses to use the management rights operator to let out their lot (be it for long term tenancies or short term stays). Known as a letting appointment, this document sets out the charges that the operator may levy, and the terms upon which the lot owner is happy for their unit to be let out for.

Having valid and assignable letting appointments in place has become a vital necessity for management rights vendors in recent years given the Office of Fair Trading's hard line stance on letting without having in place a proper contract.

In some short term buildings, you may also hear the term 'leaseback'. This scenario arises when the management rights operator promises a fixed return for the lot owner. This means that the risk of the return on the lot rests with the operator, unlike a traditional letting appointment where the risk of return remains with the owner. The lot owner obtains comfort from the fixed return, whereas the operator puts faith in its ability to secure a higher return than the rent it has to pay to the lot owner under the leaseback (with any income above the rent belonging to the operator).





### Types of management rights

There are many types of strata community schemes, consequently resulting in many types of management rights.

- **Permanent Letting**

These types of complexes are predominantly townhouses in gated or non-gated communities, or three storey walk ups / small high rises in suburban areas. Whilst the caretaking for such complexes can be extensive, letting operations tend to be easily manageable with no marketing or long office hours required.

Income is steady across the year, with no seasonal peaks and troughs.

- **Holiday letting**

The most obvious kind of management rights, generally involving the caretaking of a high rise tower (by the beach for example), and the short term letting of holiday apartments within the complex to holidaymakers. Whilst these types of management rights usually produce higher returns, they are much more demanding to run, requiring marketing skills and more intensive hours and staffing. Income also fluctuates from month to month in line with building occupancy.

- **Corporate letting**

Similar to holiday management rights, but in CBD locations. Again, marketing skills and longer office hours are generally required to accommodate short term guests. Whilst returns can seasonal, they tend to be more consistent across the year than holiday buildings.

- **Student letting**

These types of complexes have become much more common in recent years. Stay periods often coincide with university semesters which can be very demanding on 'changeover' time but otherwise not as time consuming as holiday or corporate buildings with shorter stays. Ancillary income from internet and cleaning services can produce much higher returns than typical permanent letting operations.

### Established or new?

Whilst most management rights transactions are of course the purchase of existing businesses, there is the opportunity to purchase management rights 'off the plan' for new developments. Whilst previous experience is recommended, it is not always a necessity. The initial hard work in setting up the business can often be offset by the acquisition costs being much lower than for an established management rights operation.

Feasibility of any new arrangement should be carried out carefully, placing a premium on good advice from your specialist management rights accountant and lawyer.

### Office and Reception Area

Last but certainly not least, any management rights purchaser should ensure careful consideration to their right to use the office or any other areas essential for the operation of the letting side of the business. Often this area will be included within the title of the lot being purchased, but not always. If the office/reception area is not on title then it will form part of common property. In such instances, there should always be a right in favour of the owner of the manager's residence to have the use of that area whilst ever the caretaking and letting agreements remain in place.



Operating a business in this industry can be very rewarding - commercially speaking, the returns can be very high compared to the risk accompanying it. Nevertheless, it is hard work and may not necessarily be suited to all types of people. One of the greatest positives is that operators do have the ability to add value within a short time, which in turn leads to relatively short ownership periods (typically two to three years) before an operator looks to move on to their next management rights opportunity.

Sorting out your business structuring and putting in place a team of specialist advisors before you even start looking will help ensure you're ready to proceed without delay when your offer to purchase is accepted.

#### 1. Your Support Network

The agent, your accountant, your lawyer and your finance broker / financier. These key people will steer you through the purchase process and help you realise your dream of owning a management rights. Importantly, they will also work together to safeguard a smooth and cost effective transaction.

Be wary of anybody who claims to be a specialist in this field, in particular if none of your other advisors have heard of them. With a limited number of management rights experts around, those dedicated to the industry are almost always familiar with other active specialists. Put simply, there is no substitute for true specialisation and experience gained through large numbers of previous transactions. Buying a management rights need not be complicated, but the pitfalls are many if you are not properly advised. Using an inexperienced advisor will, more often than not, result in nothing but wasted time and money, or even more seriously, an avoidable poor investment.

Ultimately you want your advisors to be one step ahead. If it doesn't sound like they are, do not consider them on your management rights transaction.

#### 2. Determine your budget

How much do you have to invest, and how much can you borrow?

Your borrowing capacity is not as easily determined when purchasing a management rights compared to say a home. Aside from the equity you personally have to invest, your potential funder will have some regard to your experience, equity in existing assets, and your serviceability of the projected debt.

A short meeting or discussion with a specialist accommodation industry finance broker can alleviate concerns and perhaps even surprise you with what you may be able to afford. Getting answers to these questions, together with having an idea as to your projected purchasing costs (including stamp duty), will help ensure your search for your ideal property is not later undone by unrealistic expectations.

#### 3. Structuring

Aside from finding the right property, one of the biggest decisions you will make in the early part of the purchasing process will be the structuring of your purchasing entity. This could be anything from personal names, a company in its own right or as trustee, a type of trust or even a partnership with other like minded persons (who either share operational responsibilities or fulfil a silent role).

Your decision making with respect to structuring should be weighted on a combination of asset protection and tax minimisation. No one likes to pay more tax than they should, and no one wants to expose their life savings to a lawsuit. It therefore follows that the best advisors for your structuring will be your accountant and your lawyer.

Like most things in life, there is no universal solution for all potential purchasers. Whilst some structures such as family discretionary trusts are quite commonplace, correct structuring can only be determined from an analysis of your personal and family circumstances, including any past investment and business dealings.

Once your entities are set up and determined, it is also important for your accountant to register any new entities for a Tax File Number (TFN), Australian Business Number (ABN) and group / PAYG / GST taxes.

### D LOCATING YOUR PROPERTY AND GOING TO CONTRACT

Found your property? Here we cover the role of the agent, signing an offer and acceptance and entry into the formal contract of sale.

#### The Agent

The agent is generally your first point of contact concerning the management rights you may be considering. The agent you are likely to deal with will be a management rights expert. Be cautious of any agent who does not specialise in this sector –they are unlikely to represent to you the true nature of the business you are considering because they themselves do not know the right questions to ask the seller.

A specialist agent will have many similar listings and can actually assist you in working out whether the management rights industry is right for you. Ask them questions and tap into their operational knowledge – most have not just sold, but also operated, these types of businesses in the past.

Whilst lawyers may like to claim to be the lynchpin in the transaction, the reality is this role is undertaken by the agent. Although the agent technically acts for the seller, he or she nevertheless provides an invaluable direct link between the vendor and the purchaser during the course of the deal. The agent enjoys this unique position to quickly pass information from one party to another, and negotiate any items that come up after the contracts are entered into.

The agent is paid a commission on the sale by the vendor when it settles, and almost always single handily coordinates the pre-contract offer and acceptance process.

#### Offer and Acceptance

The offer and acceptance is a one to two page tool for better recording the initial negotiations that occur over the price, conditions and timing of a management rights purchase.

The offer and acceptance rarely involves lawyers as it is not binding. An experienced agent will help guide you through this process and ask you the right questions to ensure all key matters are covered. Expect to be asked whether you need a long settlement, if a valuation is required, and of course, the most important items of what price has been agreed and how much deposit are you offering up front!

Almost every offer and acceptance should also note your purchase as being conditional upon accounting and legal due diligence, and finance if you require it.

#### Signing Up

Once you have your offer accepted, either the agent or the vendor's lawyer will prepare the contracts of sale, converting the non binding offer and acceptance document into a formalised watertight promise between the vendor and purchaser. The role of both the vendor's and the purchaser's lawyers is to ensure the contracts reflect the offer and acceptance exchanged and their client's instructions.

The management rights contract documentation will generally feature a unit contract (for the manager's residence) and a management rights contract (for the business). Whilst most management rights contracts are relatively standard, each has its own nuances depending on the key contract terms and the State within which the management rights is located.

Once contracts are finalised and agreed, the agent will typically arrange for their execution by each party. Upon signing, the contracts will be dated and each party will then have their copy distributed to their lawyer. Only then will the timeframes for satisfying contract conditions commence.





### E THE KEY CONDITIONS

In the pages ahead, we will consider the principal conditions in a typical management rights contract and the role each of the specialist advisors play in your management rights purchase.

Most management rights contracts will be subject to four key conditions (with usual periods for satisfaction):

1. **Accounting verification (14 days after contract);**
2. **Legal due diligence (21 days after contract);**
3. **Finance approval (28 days after contract); and**
4. **Body Corporate / Owners' Corporation consent (prior to settlement).**

For townhouse and other low rise complexes, it is also common for the unit contract to be subject to a building and pest inspection.

Whilst the timing for addressing these conditions is generally in this order, this is not to say they must be dealt with in the same manner and order in every instance. If the transaction warrants a different sequence, this will be discussed with your lawyer prior to entering into the contract.

Otherwise, this sequencing ensures that your financier (and valuer) will have access to copies of the reports from your accountant and lawyer prior to finalising the valuation or submitting your finance application for approval.

#### 1. Accounting Verification

A management rights specialist accountant is critical not just for their expertise in reviewing the performance of the management rights business, but also to ensure your prospective financier is prepared to rely on their report in lieu of carrying out their own verification (which would be at your cost). You should always ask your accountant whether they hold specific experience in the management rights sector and whether their report is accepted by industry financiers.

**Timing** – The accountant is almost always 'first on the scene', with legal due diligence generally delayed until after the accountant and the purchaser are satisfied with respect to the review of the management rights' net operating profit. This is predominantly because the management rights' trading performance is what it is – no amount of accountant wizardry can fix bad numbers. Aspects of the accountant's report will also be relevant to the lawyer's legal due diligence, particularly the inspection of the vendor's letting appointments. Expect the contract to allow you 14 days to be satisfied with the accountant's verification of figures.

### CONTRACT POINTERS

- As soon as your offer is accepted, discuss with your prospective accountant their availability to attend onsite (bearing in mind travel arrangements may need to be made);
- If you have any specific concerns about the vendor's profit and loss statement provided by the selling agent, discuss them with your accountant prior to their verification;
- Read and understand the verification report (including any assumptions made), prior to confirming to your lawyer that you are satisfied with respect to figures and their review of the letting appointments;
- Ensure you have support from your accountant on handover if necessary – you cannot solely rely on a cooperative vendor during pre and post settlement tuition.

**Verification Process** – Unlike the legal due diligence process, the accountant’s verification will virtually always include an onsite visit to the management rights. This provides the accountant with an opportunity to interview the vendor, access their trust account, computer systems and records, and provide first hand observations on the suitability and sustainability of income and expenses included in the vendor’s profit and loss figures for the twelve month period stated in the contract.

**Report** - Your accountant’s report should cover the whole ambit of financial information associated with the management rights, including detailed analysis of revenue, expenses, staffing levels, trust account compliance and service agreements. Your accountant will also carry out a detailed review of the vendor’s letting appointments with lot owners ensuring they are assignable and correctly reflect the charges being levied by the vendor. Given the unique rigidity of accounting principles within the management rights business, your accountant will not consider (or generally be given access to) past tax returns of the vendor. Your accountant will essentially determine its view of the net operating profit for the business within a recent twelve month period, based on a two person management team (such as a husband and wife).

**After settlement** – Once your accountant has completed the verification, he or she will generally only become involved again in the lead up to and after settlement. Your accountant can assist in keeping your books and records accurate and up to date, carry out your trust account audit, and prepare your tax returns and trading statements for the tax office and your financier.

## 2. Legal due diligence

Aside from our role assisting in all aspects of the transaction, a key part of our engagement is carrying out a thorough legal due diligence on the management rights business and associated real estate.

**Timing** - Our report is generally commenced as soon as we have an indication from you and your accountant that you are satisfied with the review of the figures. The contract will usually allow 21 days for the due diligence process to be carried out. Along with your accountant’s verification report, the legal due diligence report should heavily influence the decision to proceed and on what terms.

**Due diligence process** – Unlike the accountant, there is no need for the lawyer to attend onsite. Reliance is placed on documentation provided by the vendor’s solicitor as required by the contract, and government database searches carried out against the vendor, the community titles scheme and the business itself.

**The Uniqueness of our Report** - Unlike many lawyers, our report highlights not just the legal aspects of operating the business, but also key commercial items for your consideration (drawing on our extensive experience and industry know how). Our report also gives regard to potential impacts to your resale prospects (an aspect which is often overlooked by other lawyers).

Amongst other items, our extensive report covers:

- a detailed description of documentation review and searches carried out;
- analysis of the real estate included with the business and the right to use the office, any storage areas and other parts of common property for caretaking and letting purposes;
- a meticulous review of the caretaking and letting agreements and the issues arising from them;
- a dedicated review of the community management statement and by-laws for the complex, with special focus on protecting your exclusivity as the sole caretaker and letting agent permitted to operate onsite;



- analysis of the minutes and other body corporate records, including the degree of harmony within the scheme, building matters, financials and sinking fund balances, and any issues the vendor and its predecessors have faced within the body corporate and its committee;
- a thorough investigation of intellectual property issues relating to the business including website domain ownership, business name transfer, trademarks and phone and facsimile continuity; and
- potential legislative impacts on the business, including the Managed Investments Act, and the relevant jurisdiction's body corporate and real estate licence laws.

### CONTRACT POINTERS

Your lawyer will generally be in close contact with the agent, your accountant and your finance broker / financier throughout the entire transaction. Nevertheless, keep your lawyer informed about the outcome of onsite inspections, any hurdles encountered with your financing, or personal circumstances which your lawyer should be aware.

Do not rely solely on your lawyer's legal due diligence report. Make sure you read all of the report attachments in full, including the caretaking and letting agreements, and body corporate records inspection report.

Consider carefully any recommendations in the report. Matters which may not concern you, may concern the majority of the market. This could present you with issues when you go to sell.

### 3. Finance Approval

Like the accounting and legal industries, financing the management rights sector is a niche area, requiring an exceptional knowledge of its commercial drivers. You cannot expect to approach your local banker in the hope that he or she can write a loan for you that is competitive and considers the unique nature of the business you are looking to acquire. Using a non specialist lender who does not understand how management rights funding works can also jeopardise the transaction settling, exposing you to potential costs and contract default.

**Timing** – Most management rights contracts will allow you 28 days to secure satisfactory finance. This recognises that your financier generally requires the accountant's verification report and lawyer's due diligence report prior to finalising your finance approval.

**Applying** - Aside from demonstrating your usual finance credentials, your management rights financier will normally require a valuation of the real estate, and on some larger or highly geared transactions, a valuation on the business itself. The financier will also typically require a copy of an industry recognised accountant's verification report and lawyer's legal due diligence report prior to being able to submit your application for credit approval. Once all this information is to hand, approvals are often determined within 5 working days.

**Loan Amount** - Although each bank's lending criteria differs depending on the location and nature of the business, as a rule of thumb (and subject to debt serviceability and experience), banks will typically advance 70% of the combined business and unit purchase price. In some cases, a specialist broker can access greater gearing for experienced operators. This high level of funding is often what sets management rights businesses apart from other business purchases (where 50% funding is the norm). This ably demonstrates the bank's comfort with the management rights industry and the security and returns derived from it.

**Loan Term** - The term of the loan is generally dictated by the balance term remaining on the caretaking and letting agreements, or 15 years, whichever is the lesser. This is a crucial consideration for highly geared purchasers with a short balance term remaining on the agreements. It is also a reason why prospective selling management rights operators should top up their agreements where possible to ensure the term remains as great as possible.



**Bank Security** – The financier’s security tends to be in the form of a charge over your management rights business and a mortgage over associated real estate. In States other than Queensland, the financier’s charge is also accompanied by a deed between the Owners’ Corporation and the bank allowing the financier right of entry in the event that you default under caretaking and letting agreements or fail to meet your loan repayments to the bank. In Queensland this deed is not necessary, as protection is set out in legislation.

**Costs** – In terms of upfront costs, you will be expected to bear the bank’s valuation costs and the preparation of its security documentation. For larger transactions, you may also have to pay for the bank’s lawyers carrying out a ‘document review’. This is akin to a supplementary due diligence in addition to that carried out by your lawyer. These costs are in addition to any application or loan approval fees the bank may charge.

**After Settlement** - Most management rights funders will require you to report to them at regular intervals after settlement as to performance, including letting pool numbers. These are typically known as conditions subsequent. Funders may also have additional insurance requirements above those noted in the caretaking and letting agreements. Your funder will normally provide you with merchant facilities (for short term letting if appropriate) and set up your trust account for handing lot owners’ monies.

#### 4. Body Corporate Consent

Once the purchaser has confirmed satisfactory accounting verification, legal due diligence and finance (and paid balance deposits if any), the vendor knows that it has a deal and the contract is commonly referred to as ‘being unconditional’. This is because the remaining condition of body corporate consent is almost always satisfied, and is outside of the direct control of the purchaser (and its advisors).

**Consent process** - Body corporate consent is a significant part of what makes a management rights transaction different to many other types of business purchases. The body corporate is entitled to satisfy itself as to the credentials of the purchaser prior to granting its consent to the assignment of the management rights from the vendor to the purchaser. The body corporate must not unreasonably refuse its consent and there is substantial case law restricting a body corporate’s right to refuse consent in only the most extreme of cases.

## CONTRACT POINTERS

- Funding pre-qualification is inexpensive and an important step to consider prior to proceeding to contract. This is particularly important if you are looking to borrow against existing property assets or refinancing;
- Discuss with your broker the likely costs associated with obtaining finance;
- Supply financials and other records promptly when requested by your finance broker or bank to ensure contract dates can be met;
- With the assistance of your lawyer, be aware of the bank’s loan conditions precedent (before settlement) and subsequent (after settlement) prior to confirming satisfactory finance under the Contract.

The body corporate approval process is carried out at committee level, avoiding the need to involve every lot owner in the building. Exactly how extensive or protracted the body corporate committee and its advisors make this process is variable. Under law, the body corporate cannot take longer than 30 days to decide its consent, although the commencement of this 30 day period is debatable, starting only when the body corporate considers it has all information necessary to consider its consent to the assignment of the management rights.

Once the committee has copies of your credentials, a meeting is typically organised which can be as formal as a job interview or as informal as drinks and nibbles by the pool area. Part of our role is to assist in preparing you for whatever the committee may query you on.

### CONTRACT POINTERS

- Get your resumes and references in order before you proceed to contract. You will be busy enough without worrying about them at the back end of the transaction. Your credential documentation for your financier can often be replicated easily for the body corporate.
- Make yourself available to meet with the body corporate committee as and when they require. By all means take a holiday before you take over the business, but don't let this jeopardise the timeliness of body corporate consent and cause delays to the settlement date.

**Right of Entry Deed (not applicable in Queensland)** – If your bank is taking security over the management rights, it will generally also require the body corporate to consent to the mortgaging of the business. In Queensland, this process is unnecessary as the rights of the financier are already covered in the State's body corporate legislation. For other States, it is necessary for the negotiation and execution of a right of entry contract between your bank and the body corporate (Owners' Corporation). This deed records the Owners' Corporation's agreement to notify your financier of any default, and allows your financier to take possession and operate of the business should you fail to make your repayments under the loan. This document is relatively standard and except in limited cases, is usually finalised quickly and concurrently with the Owners' Corporation's consent to the assignment of the management rights.

**Demonstrating Credentials** - The lawyers take care of the negotiation of the deed consenting to the assignment of the management rights. That leaves the purchaser to focus on substantiating their credentials and financial position to the body corporate committee. Ordinarily a committee will require the following:-

- Resume highlighting past business experience and qualifications. A business plan can also be helpful for holiday or corporate style management rights where marketing is important;
- Two or three business/trade references and two or three character references – these need not be any more than a single page and should include contact details. A letter from your accountant is often a good reference, as are references from business associates, people with whom you have had credit with in the past, or friends of good repute in the community;
- Evidence of financial standing, generally in the form of a statement of assets and liabilities, and a copy of your approval letter from the financier; and
- Police check of any directors or persons to be involved in the operation of the business (these are now relatively quick and inexpensive to obtain).



## F Other Matters Prior To Settlement

### Licensing

Operating the letting component of the management rights business requires a licence to be held in accordance with the relevant state's real estate licensing laws. In the case of Queensland, a specific type of licence was devised especially for management rights – a resident letting agent's licence. To obtain a licence, the prospective management rights operator must complete a licencing course (there are several course providers), pay a licence fee to the Office of Fair Trading, and satisfy criminal history checks. As these are virtually all within the control of the management rights purchaser, contracts are practically never conditional upon the grant of a licence. In other words, it is up to purchaser to make sure they complete the course and lodge the paperwork within time.

Your management rights accountant and management rights lawyer will be happy to assist with the application process. Aside from your personal details and evidence of completion of the licensing course, the licence application also requires details of your intended trust account, the trust account auditor you are going to appoint, and the building within which you will operate. You will also need a copy of the body corporate's consent to you operating the management rights (which your lawyer obtains as part of the body corporate consent provision in the contract). On occasion, it may be the case that you will not have your licence issued prior to settlement. The Office of Fair Trading is known to not pursue any unlicensed person provided they have completed the course, paid the fee and lodged their application for processing. Nevertheless, it is important to lodge your licence application as soon as possible once you have made the decision to proceed with your purchase.

Once you have been issued with your licence or licences, it is important to comply with the terms of it, and the statutory codes of conduct expected of you as a licensed person. These codes of conduct are available for review online from the various state government websites.

### Jurisdiction

The operating conditions, commercial drivers, licensing requirements and legislative framework differ for management rights from state to state. Pevy Lawyers acts regularly on management rights transactions across Australia, especially in Queensland and New South Wales where the bulk of management rights business are situated. For that reason, this guide focuses on the environment generally associated with these states. For more specific discussion on other states of Australia or across New Zealand, please do not hesitate to contact us.

### Stock

Most Queensland management rights are sold on a stock inclusive basis. Known as 'walk in walk out', this means the stock levels associated with the business need only be sufficient to maintain its current operators. So don't expect excess toilet paper or office supplies!

In New South Wales and other states, stock may be additional to the business purchase price, and is inventoried via a stock take on the day or the evening prior to settlement.

## CONTRACT POINTERS

- Do some homework early as to what training you require to satisfy the criteria for the letting licence. There is no requirement for you to have entered into a contract to purchase a management rights before you can complete the training course.
- Lodge your licence paperwork as soon as you have obtained finance, even if your application is not complete. This will allow for your application to 'work its way to the top of the pile'.
- Regular persistence in chasing the relevant authorities can often see your application expedited and ensure it is issued shortly after settlement.
- Be careful to secure licences for those who will conduct letting activities. This includes your company (whether acting as trustee or in its own right) if you are not purchasing the business in your personal name.



## G Settlement

Once all the conditions in the contract are satisfied and body corporate consent documents signed, arrangements are made for settlement.

As purchaser, you will be onsite in the week leading up to settlement to manage handover and learn the ins and outs of operating the management rights business. Keys, access passes, wholesaler arrangements, bond lodgements, and adjusting on forward bookings and rents in advance, all need to be covered during this time. You should also bear in mind that the assistance you receive from the vendor prior to settlement is likely to be of superior quality than that provided after settlement.

Like most other property purchases, you are personally responsible for switching over the phones, internet, electricity, gas and other service accounts with the relevant providers to the manager's residence.

Your lawyers and bank will, in the days leading up to settlement, be busily finalising all the paperwork and logistics associated with the movement of money from the purchaser to the vendor. Settlement itself is actually quite a fast process, often taking less than 30 minutes. In exchange for cheques, ownership documentation is first handed to the lawyers for the purchaser, and then onto the purchaser's bank to be held as security for the bank's loan.

Once settlement has been confirmed, the management rights business and residence are officially the purchaser's and it is entitled to all takings (from and including the day of settlement). The vendor's role thereafter is to provide any post contract assistance. This is often no more than 7 days. The vendor must also observe any restraint from competing with the business it has just sold, for the period set out in the contract. This restraint will, at a minimum, cover letting and sales within the complex. This ensures that the business goodwill is preserved for the purchaser.

Your financier should also be followed up to ensure your trust account and merchant facilities are in place (if necessary), and operational in time for settlement.

Following settlement, a bound folder containing all documents will be provided to you by our office for your future quick reference, and for tax and other record keeping purposes.

### FINAL THOUGHTS

A handbook such as this is no substitute for getting the right legal advice for your personal circumstances and the management rights you are considering. It is very important that you seek, consider and act upon the advice of your specialist legal, accounting and finance advisors. Of course, our team of legal specialists are always very happy to alleviate any concerns prior to you making an offer and our actual engagement.

Otherwise, we hope you have received value from this handbook and take this opportunity to express our best wishes as you embark on the rewarding journey towards the ownership of your desired management rights business.



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