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THE CHANGING FACE OF MANAGEMENT RIGHTS SALES

Management rights, like all industries, change and evolve over time.

One of the biggest changes I have seen in recent years is the sale process itself. In the good old days, contracts were regularly prepared and settled on the basis of:

- Financial verification – 14 days from contract date;
- Legal due diligence – 21 days from contract date;
- Finance – 28 days from contract date;
- Body corporate approval – prior to settlement;
- Settlement – 45 days from contract date.

As soon as contracts were signed, the sellers would regularly go off and book that eagerly awaited European holiday – departing on the day after the due settlement date.

My, how things have changed!

These days, the stars need to align with the planets for a sale to be completed within 45 days.

So What's Changed?

These days, most sales take at least **10-12 weeks** to complete. There are a number of issues that are impacting on the length of a sale that are becoming the new norm.

For starters, body corporate committees are no longer rubber-stamping assignments – which is fair enough.

Bodies corporate are being advised by their solicitors that they don't have to accept whoever is brought forward by the seller and they are probing far deeper into the work history, character and finances of buyers. Police reports and business plans were never asked for in the past, but are now par for the course. Committees, armed with predetermined questions about what the buyer is going to do for them, now regularly conduct lengthy interviews with buyers and even have some buyers assessed by third party consultants.

I have no problem with this process, as long as it does not become silly (like a body corporate solicitor recently wanting a buyer to justify how he could handle a 2% rise in interest rates, if it were to happen!).

Body corporate solicitors also play a much more involved role in the sale process and costs have ballooned as a consequence.

The Timing Problem

Once sale contracts are signed, a three-step process begins for the buyer:

1. Financial verification;

2. Legal due diligence;
3. Finance approval.

Once these steps are completed, the approval of the body corporate is then sought, with settlement to occur soon after.

Regardless of the seller's or the buyer's wishes, the banks and the body corporate solicitors are ultimately determining the timing of settlements. In Queensland, assignments of management rights can be dealt with by the body corporate committee and they do not have to go to general meetings for approval. In NSW, the approval must be given by an Owners Corporation at a general meeting.

Financial Verification is still usually completed within 14-21 days from the contract date. However, the banks are taking a lot more time to process loan applications. Valuers are engaged and they naturally take time to complete their valuations. Then the banks' credit departments have to assess each application before an offer of finance is issued. Finance offers that used to be ready after one month are now usually taking two months.

This has a cascading effect, as the process of obtaining body corporate consent for a sale is usually only sought once finance approval has been received. Sellers notify their body corporate of the sale and it is at this stage that the body corporate appoints a solicitor to review and advise on the assignment documentation. In ideal circumstances, the body corporate consent is obtained in 30 days or less. In reality, this process is often taking 45+ days.

The Role of the Parties

Throughout the sale process, there is a constant clash of competing interests. The seller, the buyer, the bank and the body corporate all engage lawyers to look after their interests. Obviously, this is fine as long as the clash of interests does not become a clash of self-interest. Each party must play their part.

The sale is a PROCESS and each party has a role to play to complete the process. When embarking on this process, the selling agent is the first point of contact and needs to condition both the sellers and the buyers as to what are reasonable time expectations for settlement.

Sellers need to play their part by cooperating with buyers' reasonable extension requests and being proactive in managing the sale process (particularly managing owners and committee expectations). Pressuring parties to adhere to unrealistic timeframes is counter-productive and, ultimately, can lead to the sale collapsing, leaving the seller to start the whole process all over again.

Buyers likewise need to hose down their expectations as to when they can start earning income. We all understand that most buyers go for lengthy periods without income in the lead up to settlement, where it is all money out and no money in.

And finally we solicitors, engaged by the buyers and sellers, also need to work cohesively, particularly in relation to satisfying the requirements of the body corporate's solicitor. Yes, sales are taking longer but we do get there in the end.