

## IS OWNERSHIP OF A MANAGER'S UNIT ESSENTIAL?

One of the biggest “selling” points as to why it is beneficial for an Owners Corporation to enter into a 10 year Building Management Agreement with a Caretaker/Manager is that they are engaging a person who is going to be living onsite on a long-term basis and are therefore readily available to deal with all of the issues and emergencies that crop up from time to time, outside of normal working hours. This is particularly so in the larger complexes.

However, with the substantial rise in real estate values in recent years, we are seeing a consistent push by building managers to want to “unhook” the management unit from the Building Management Agreement. This is primarily driven by the fact that the net return on the total investment in management rights can be significantly reduced because of the high cost of buying the management unit.

Some management rights sale brokers have reported occasions recently where this reduced rate of return has led buyers to look for alternate types of businesses, whilst they chase a better rate of return. For example, leasehold motels – with no Owners Corporation to deal with, no real estate to purchase, no real estate licence or trust account required, a residence still included onsite and long-term security of tenure.

### How best to overcome the problem?

The answer will very much depend on how the management rights have been structured in each complex.

If the reception/office area is part of the title to your residential unit (or is an exclusive use allocation attaching to your residential unit) then you have no flexibility and the unit cannot be severed from the management rights.

In the Sydney area, however, there are many reception/offices established as separate freehold lots. Consequently, designated managers’ residential units are irrelevant to the ongoing operation of the management rights. There are also other complexes where there are no reception/office areas required for the running of the business.

It is these types of complexes where there are some real options available.

### Options

Your options are twofold –

1. if your Owners Corporation will allow it, sever the management unit completely from the management rights so that the management rights are attached only to the office lot; or
2. sever the existing management unit from the management rights but provide that the manager must still reside in the complex.

By doing this, the manager has the flexibility of either buying a cheaper (say) one bedroom unit in the complex or renting a two or three bedroom unit.

## So, what is the better option?

I remain a firm believer that building managers should reside in the complex they manage. It is difficult to argue that Owners Corporations should engage building managers on long-term agreements if there is not some stand out, positive reason for doing so. That stand out reason is having a building manager living onsite and effectively on call 24/7, in the case of an after hours emergency. This is the ultimate (and unarguable) difference between an Owners Corporation engaging a Building Manager -v- employing ad hoc tradespersons to handle repairs and maintenance of common property as required.

## Severance Process

As long as the building manager resides in an onsite unit, ownership of a unit should be irrelevant to the Owners Corporation. So, what is the process to achieve this?

1. Firstly, the Building Management Agreement will need to be varied to delete reference to the nominated manager's residential lot – and substitution of a reference to “any lot occupied by the manager from time to time”. This variation will require an ordinary (majority) resolution at a general meeting of the Owners Corporation.
2. Secondly, a change **may** also be required to the by-laws – so as to delete reference to a particular nominated manager's residential lot and to substitute a reference to “any lot occupied by the manager from time to time”. This change of by-laws will require a special resolution (which can only be passed if no more than 25 per cent of the votes, based on unit entitlement, are cast against the motion.)

## CONCLUSION

Building managers should consider their options as far as severing expensive residential management units from the management rights documentation and thereby provide flexibility, moving forward.

This flexibility will make a future sale of the management rights more attractive in the marketplace.

Article Written by Col Myers of Small Myers Hughes Lawyers

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