

SAME, SAME - BUT DIFFERENT? TOP UPS AND EXERCISING OPTIONS

Tenure is critical to the success and value of your Management Rights business.

The length or duration of your agreements is usually called the “term” and your “total term” might be a single period, e.g. 10 years, or it might be made up of an initial term and then a series of option periods, e.g. 5 years plus 5 years plus 5 years etc.

This article looks at how managers can extend their current term, as well as the total term of their agreements, and how these are actually two entirely different, but very similar things to do.

The “current term” of your agreement is just that – the current period your agreement is in and does not include any option terms that are yet to be used. To take up an option you must “exercise” it. Until an option has been exercised strictly in accordance with the conditions stated in your agreement, the option period is not actually included in your current term and your agreement will end when the current term ends.

Exercising Options

It is important to remember to exercise your options before they are due to commence. Some options exercise automatically, without you needing to do anything. But for most managers you will need to follow a specific process as set out in your agreements. This generally means giving notice at least 3 months before your current term ends. If you fail to complete the option exercising process by the deadline set out in your agreement, you lose the option, plus every other unexercised option after it. This means, for example, that an agreement that has a total term of 25 years could end after just 5 years, if the options are not exercised correctly.

“Topping up”

This is the process of extending the total term remaining under your agreements. In NSW, topping up is generally done by replacing the existing agreements with new agreements that renew the term up to the maximum 10 year term allowed under the legislation. In Queensland (and most other States and Territories), topping up is generally done by varying the existing agreement by creating a new option term and adding it to the end of the current total term in the agreements.

For managers new to the industry, it can be easy to mix up the difference between exercising an option and topping up your agreements. It is important to note that when you top up your agreements you are extending the total term of your agreements, but you are not extending the current term of your agreements.

If you are planning to “top up” your agreements around the same time that you are due to exercise an option, you will need to make sure that the process to exercise your option is still completed, regardless of whether you complete the top up process or not.

To help avoid any confusion or mistakes, it is highly recommended that all managers track the following dates in their calendars:

- The first date when you can start exercising each option in your agreements;
- The last date you can exercise each option in your agreements;

- For agreements with a maximum total term of 10 years, the date the total term remaining falls below 8 years;
- For agreements with a maximum total term of 25 years, the date the total term remaining falls below 20 years;
- The date at least 2 months before the date you need to submit motions to the strata manager to place owners' motions on the agenda of the AGM.

And when these dates pop up, reach out to your solicitor and confirm what you need to do next to keep your agreements healthy and valuable.

Article Written by Ben Ashworth of Small Myers Hughes Lawyers

Liability limited by a scheme approved under Professional Standards Legislation
Disclaimer – This article is provided for information purposes only and should not be regarded as legal advice.