

SHOULD MANAGERS ALWAYS HAVE A RIGHT TO PUT MOTIONS ON THE AGENDA?

As the Management Rights industry has evolved over the years, it has become increasingly common for managers not to own a lot in the scheme they manage. This has had a flow on effect which means that managers regularly do not hold a right to put a motion on the agenda of the Owners Corporation meetings. Most of the time this is not a great concern, when the manager has a good relationship with the committee or the issues in play are not contentious. It does however become a significant concern when the manager needs or wants something done and doesn't have the luxury of time.

In most jurisdictions in Australia, the manager can only expect to have their motion (e.g. to top up their agreements) included on the agenda for a meeting if the motion is submitted to the Owners Corporation by a lot owner or the committee. Managers who don't own a lot will typically need to ask an owner in their letting pool to submit their motions on their behalf. This can be an awkward or difficult conversation for many managers, which is made more difficult if there is very limited time to submit the motion; or the motion relates to something complex and difficult to explain; or the motion relates to a contentious issue.

Getting an owner who has no vested interest in the manager's business, but has the time, capability and understanding to assist the manager, is rarely easy. So how could this be avoided?

I see three possible solutions that could assist managers in this instance:

1. The legislation is updated to grant the manager a right to submit motions for meetings, treating the manager just like an owner, regardless of whether the manager owns a lot in the scheme.
2. The by-laws for the scheme are amended to grant the manager a right to submit motions like an owner.
3. The caretaking and letting agreements are drafted with a clause granting the manager a right to submit motions like an owner.

Option 1 is by far the most ideal solution, as this would entrench a right for all managers no matter their circumstances. However, achieving this will take years and require extensive effort with the law-making process.

Option 2 is potentially achievable on a scheme-by-scheme basis. It will take significant owner support and is likely more achievable through implementation at the development stage of the scheme.

Option 3 only requires a simple majority at a general meeting to achieve. This solution is not perfect though and may encounter resistance when seeking to enforce the rights against an aggressive Owners Corporation in some jurisdictions.

What is consistent in all options is that implementing at the commencement of the scheme is far more likely to succeed. A greater awareness of this issue throughout the Management Rights industry may also help sow the seed needed to have this actively addressed at the legislation level. Until then, if you are a manager in a scheme and don't own a lot, be very proactive in managing your relationships with the committee and owners. And if you plan to submit a motion in the future start educating an owner on the role you will need them to play well in advance.