

CONVERTING YOUR MANAGEMENT RIGHTS TO AN OFFSITE BUSINESS

A common element of the quintessential Management Rights business model is the manager living in and owning a lot in the complex. For some complexes, the extra services that the owners receive from an onsite manager can be the deciding factor in why there is an onsite manager at all, as opposed to simply using a handful of contractors engaged for specific tasks.

In most circumstances, the obligation for a manager to own a lot or live in the complex is stated as a duty in the caretaking agreement between the manager and the Body Corporate. The exact nature of the obligation can vary, but will generally fall into one of three scenarios. Either: the manager must own a lot and live in it; the manager must own a lot and someone performing the caretaking duties must live in it; or someone associated with the manager must own a lot and someone performing the caretaking duties must live in it.

In an ideal situation where a manager owns a lot in the complex, the by-laws for the complex will also include special rights that attach to that lot. These types of by-laws can provide an extra layer of protection for the manager's business and prevent competition from other owners and occupiers within the complex.

For a variety of reasons, it is becoming more common for complexes to have an external manager who does not own a lot or live in the complex. As property values have increased over the years the value of the manager's lot can be disproportionate to the value of the Management Rights business. This has resulted in situations where it can be unaffordable for the manager to own a lot in the complex and this can make it very hard to sell the Management Rights business.

Although a complex may have started its life with a live-in manager does not mean that it must have a live-in manager forever after.

If you are a manager and wish to restructure your Management Rights business so that you do not own or live in a lot in your complex, here is a list of things you will need to consider:

- What rights and special advantages will you lose if you no longer live in the complex?
- Will the majority of the owners in your complex agree with you no longer living in the complex?
- Do your agreements with the Body Corporate need to be amended to allow you to live offsite?
- Does the remuneration you receive for caretaking the complex include payment for after hours services?
- Do your by-laws need to be amended to ensure that the manager retains exclusive rights regardless of where the manager lives?
- Do your by-laws need to be amended to ensure that you aren't accidentally giving special rights to the new owners of your lot when you sell it?

Ultimately your ability to restructure your business and become a manager who doesn't live in the complex will come down to the opinion of the majority of the owners. You will need owners to agree that the complex doesn't need a live-in manager and/or that the level of service the owners will receive will not go down if the manager no longer lives in the complex.

If you are considering going through this process speak to your lawyer sooner rather than later, as the process requires a general meeting of the Body Corporate and usually will take at least two months to complete.

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