

DID YOU EXERCISE YOUR OPTION? AND I DON'T MEAN A TOP UP

This isn't the first time I've written an article about knowing the difference between exercising an option in a building manager agreement and topping up a building manager agreement – and history teaches that it won't be the last. What motivates me to raise this again is that every year new managers come into the industry and every year similar mistakes get made. But the people that make these mistakes are not always the rookies.

A building manager agreement that includes one or more option terms is an agreement that needs an event or a trigger to occur so that the agreement keeps functioning and doesn't prematurely expire. Some options can exercise automatically without you needing to do anything. But for most managers you will need to follow a specific process set out in your building manager agreement. Usually, the manager needs to give at least 3 months' notice to the Body Corporate before the current term ends so that the option term can commence. Be aware that for many agreements it is also possible to give notice too early. An option notice provided before the correct date will not work as intended and you will need to send the notice again.

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 (like you find in Queensland) could end after just 5 years if the first option is not exercised correctly.

For people new to the industry, the difference between phrases like "current term remaining" and "total term remaining" may not be obvious, but these are very significant differences. The "total term remaining" is a reference to the total duration of the building manager agreement remaining **IF** all the option terms in the agreement are exercised at the correct times, whereas the phrase "current term remaining" is a reference to just the current period that the agreement will remain in force and effect, and it does not include any extensions of the term available under any options remaining in the agreement.

When you "top up" your building manager agreement, you are typically asking the Body Corporate to add a new option term to the agreement. If you are successful with your top up it extends the "total term remaining" of the agreement. **A top up does not extend the "current term remaining"**.

Do not fall into the trap of assuming that topping up an agreement has the effect of exercising an option. Sometimes you might find that you want to top up your agreement but also at the same time need to exercise an option. These are two separate tasks. Be sure to not to lose sight of this and check that everything you need to do to exercise the option is not lost in the shuffle when going through the significantly more involved process that is a top up. If you are ever unsure which is which and what you need to do, ask your legal advisors – the sooner the better.

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.