
MANAGEMENT RIGHTS MANAGED INVESTMENT SCHEME COMPLIANCE IS M.I.A.

Forget what you think you know about Managed Investment Schemes in a Management Rights business. Or, more accurately, try to remember what your lawyer told you about Management Investment Schemes when you bought your Management Rights business and forget what everyone else has been telling you since then.

As a lawyer working on Management Rights transactions for many years, it's hard to name an area of the law that is more often overlooked and misunderstood by building managers than the law surrounding Managed Investment Schemes. I'm not surprised or offended by this as Managed Investment Scheme compliance fits snugly in the "set and forget" box for many businesses – and, ideally, it has been "set" correctly by the prior building manager so that when a new building manager comes along there appears nothing new to do.

The problem of course is that there are things that need doing and this becomes especially apparent when it comes time to refinance or sell your Management Rights business.

Should you keep reading this article?

If you don't conduct any lettings with your Management Rights business, this is not for you.

If you only operate permanent/long-term lettings in your complex, this is not for you.

If your complex has less than 20 units, this is not for you.

If your business conducts short-term lettings but you currently have less than 20 units in your letting pool, bookmark this page and come back when it looks like you might go over 20.

If you are still here it means you conduct short-term lettings in your complex and your letting pool has the potential to go over 20 owners or already is over 20. In simple terms, it means it is very likely that you are operating what is considered a Managed Investment Scheme and need to comply with a list of requirements that are regulated by ASIC. Failing to do so is a breach of the law and the terms of most loans offered by banks.

Note that I made no mention above about "pooling" income or "pooling" expenses. What is or isn't considered a Managed Investment Scheme in Management Rights has nothing to do with whether income or expenses are pooled. Nothing. Zip. Zilch.

So at this point in time, it is best to assume that you need to be compliant and that this will require a checklist of things to be considered and addressed by your lawyer. In most cases, this means updating or inserting certain terms and conditions in your letting appointments and preparing and issuing a Product Disclosure Statement (PDS) to every owner in your short-term letting pool. How much or how little you will need to do depends on your personal circumstances and the level of compliance that you inherited from the previous building manager before you.

Unless you are absolutely certain that you understand your day-to-day obligations and requirements that keep you Managed Investment Scheme compliant, I strongly recommend you touch base with your lawyer – and after you have done that and got all your documents and procedures in order, you can go back to setting and "mostly" forgetting.

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