

# YOU AND YOUR BUSINESS ARE AT RISK – DO SOMETHING ABOUT IT!

by John Mahoney, Managing Partner

I am constantly amazed that many resident managers have failed to heed the warnings I and others have regularly issued about getting their Letting Appointments in order.

Whilst this article focuses on the importance of Appointments and their assignment provisions when selling, you should not forget the **overall importance of always having your Appointments in order**. Failure to do so risks **owners suing to recover commissions** and charges paid, **prosecution** by the Office of Fair Trading and **breach action** by the Body Corporate that could lead to the **termination of your management rights Agreements**.

So yet again, I stress to all resident managers, please **make sure** you have up to date, **compliant** and **properly assignable** Letting Appointments.

The issue is a constant source of **angst and frustration** in so many management rights transactions where lawyers and accountants find Letting Appointments that do not contain assignment clauses.

The provisions in PAMDA are to the effect that Letting Appointments are not assignable unless either:-

- (a) The Appointment **contains an assignment provision; or**
- (b) The seller seeks and **obtains the written consent of the owner** to the assignment before settlement of the sale.

It is an **offence** for a seller, in the case of a Letting Appointment without an assignment clause, to assign that Appointment without the owner's consent.

**Whether or not you are contemplating selling** I encourage every resident manager to conduct a **thorough review** of your Letting Appointments to make sure they are compliant and contain an assignment provision. If you have used the more recent versions of the PAMD Forms 20a that require the owner to initial the assignment section of the form, make sure it has been ticked and initialled.

It is not just the assignment provision that is important. There are many other prescriptive requirements for Letting Appointments. A problem we often see is the failure to set out correctly the commission structure and the other charges and expenditures. An astute buyer will pick up on these deficiencies.

So if you need to send out new Forms 20a because your existing ones are deficient, take the **opportunity** to update your Appointments with your current charges and incorporate the new ARAMA conditions.

If you do not you will almost certainly have problems when you go to sell. Almost without exception, management rights agents and other lawyers use our special conditions that go with the standard REIQ Management Rights Sale Contract. These extend the accountant's income verification condition to include **satisfactory Letting Appointments and the assignability** of those Letting Appointments.

So accountants are now checking and reporting on the assignability of Letting Appointments and as a general rule where there is anything other than a minimal number that do not have compliant Appointments, a seller can expect a buyer to **that this be rectified before settlement or the purchase price be reduced**

**for non-compliant Appointments.** We have had instances of significant price reductions and termination where there have been non-compliant Appointments.

**So please check your Appointments** to see if they contain an assignment clause and are **otherwise compliant** with PAMDA. Address this issue now, not wait until you decide to sell. If you don't, **expect problems when you do sell.**

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