



WELCOME

By John Mahoney, Managing Partner

Welcome to the latest issue of our quarterly Newsletter. There is no doubt that we are living in interesting, and difficult, times. Unheard of share market volatility, the USA having its credit rating reduced for the first time in history, wildly fluctuating views about the next movement in interest rates and the uncertainty of a new carbon tax are hardly an encouragement for business investment. Yet despite all of these seemingly negative factors, the management rights industry is performing relatively well.

We have been pleasantly surprised at the success of our recently opened full time office at Varsity Lakes on the Gold Coast headed by well known management rights partner Matthew Manz. Although we began with just Matthew and his experienced and appropriately named paralegal Marney Allen – yes that's right "Marney from Mahoneys" – another experienced management rights secretary/paralegal Sasha Hubbard has recently joined the team. We also expect to announce shortly that another lawyer experienced in management rights and body corporate law will join us.

Whilst there may not be the volume of management rights transactions taking place as there has been in the past, there still seems to be a market for solid, well performing businesses throughout Queensland and New South Wales. Based on the success of the Gold Coast office, the steady performance of our principal office in Brisbane which also draws much work from the Sunshine Coast and further north, we are quietly confident that the market will steadily improve in coming months. Whilst we might not ever see again the heady days of the early 2000's, that may not be such a bad thing.

I hope you find the articles in this issue of interest. I very much appreciate the regular feedback from our readers and once again thank our many clients for your support and encouragement.

SEPARATING TO SELL - WHEN DIVORCE IS GOOD!

By Matthew Manz, Partner

With the changing economic conditions over the past few years it has become increasingly difficult for owners of certain types of management rights businesses to sell their unit and business together. Problems arise where the caretaking and letting agreements require the manager to own and/or reside in a unit in the complex and –

- the business is netting a relatively low nett profit (say under \$70,000 - \$80,000 a year); and/or
- the value of the unit is disproportionately high in comparison to the value of the management rights business.

We saw a number of these problems on the Sunshine Coast in particular where in small to medium size complexes on or near the water, the value of the manager's unit increased dramatically, but the income of the business barely changed, making the purchase unviable. The problem also manifested itself in many smaller complexes with low levels of income placing the purchase of the business and the manager's unit outside general lending guidelines.

As a result we have received numerous enquiries from, and handled a number of transactions for, managers seeking to "separate" or "de-couple" the manager's unit from the management rights business. By separating the business from the manager's unit, when it comes time to sell the business, a wider range of buyers will be attracted, as a buyer –

- is not required to outlay a significant amount of money to acquire the manager's unit (in comparison to the business), particularly if the buyer does not intend to reside in the manager's unit; and



• CPI increases

Most Caretaking Agreements provide for CPI increases. We often see that managers have not claimed these increases for several years! The following is a table of the Brisbane All Groups CPI figures.

For example, if your remuneration started at \$100,000 in October 2005, the correct calculation for the October 2010 increase based on Brisbane All Groups CPI would be $\$100,000 \times 179.1$ (i.e. the last index figure before the review date) / 150.9 (i.e. the last index figure before the commencement date) = \$118,687.87.

That would be increased by 10% GST if there is a GST escalation clause in your Caretaking Agreement. Managers should check that there is.

In the last 10 years, the CPI has increased by about 40%.

Mahoney Lawyers have assisted many managers in having their remuneration increased to market level.

Up to date figures can be found at <http://www.oesr.qld.gov.au>.

2000	March	125.5
	June	126.4
	Sept	131.3
	Dec	131.6
2001	March	132.7
	June	134.0
	Sept	134.2
	Dec	135.8
2002	March	137.1
	June	138.1
	Sept	139.2
	Dec	139.9
2003	March	141.8
	June	141.8
	Sept	143.3
	Dec	144.2
2004	March	145.4
	June	146.3
	Sept	146.8
	Dec	148.0
2005	March	149.2
	June	150.0
	Sept	150.9
	Dec	152.1
2006	March	153.5
	June	156.2
	Sept	157.5
	Dec	157.3*
2007	March	158.0
	June	160.2
	Sept	161.7
	Dec	163.4
2008	March	165.6
	June	168.4
	Sept	170.8
	Dec	170.4*
2009	March	170.8
	June	171.8
	Sept	174.1
	Dec	174.7
2010	March	176.0
	June	177.3
	Sept	179.1
	Dec	180.0
2011	March	182.3
	June	184.1

* negative quarterly CPI

- can add the business to an already existing business or businesses, particularly if the building is within close proximity to the others owned by the buyer.

In order to “separate” or “de-couple” the unit from the business it is necessary to amend the caretaking and letting agreements and in most cases the by-laws. Any changes to those documents must be considered by the Body Corporate at an extraordinary general meeting or an annual general meeting.

In the past few years and more so in recent times, we have had considerable success in achieving such an outcome for a number of managers. However, as with any change to agreements or by-laws, it is essential that a manager have a good relationship with the owners and importantly the Body Corporate Committee as Committee support is generally critical to success.

We are generally able to arm our clients with reasons why the Body Corporate and owners will benefit from the proposed “separation” and put in place a strategy for achieving the outcome sought. We expect that given the continuation of the poor economic conditions prevailing at the moment, there will be many more managers looking to do likewise.

OH NO, NOT THAT AGAIN

By John Mahoney

I seem to have written countless articles in the past 5 years or so about the need to make sure that your letting appointments are assignable and despite the temptation to raise the matter again, I won't. Other than to say that assignable letting appointments are critical to a successful sale.

What I did want to write about was the importance of letting appointments generally. Like so many factors in any business, you really never know how important something is until a problem arises. This is so true of letting appointments.

It would take me pages and pages to set out all of the important aspects of your letting appointments. The subtle difference between putting your advertising levy in the PAMD Form 20a as a charge rather than an expense, the need to specify the management fee quite distinctly from commission or the careful way in which you must deal with any profit or mark up you make in providing services to your owners are just some examples.

Recently an old chestnut raised its head again, that of properly dealing with providing gardening services to tenants. There is the right way to do this, so that the income is lawfully earned by you as manager and quite able to be included in the income of the business to which the multiplier will be applied. Then there is the wrong way which if followed results in you breaching the residential tenancies legislation and precludes the income for that service from being included in the verifiable income of the business.

Another common pitfall is the way that leasebacks or guaranteed returns to owners are dealt with. Most valuers will ignore, or reduce considerably the multiplier on, income derived from leasebacks so understandably managers prefer some form of guaranteed return to the owner in their letting appointment. But this requires careful wording to avoid potential PAMDA and GST problems.

We have also helped managers come up with alternative ways of dealing with the complaints they get from the myriad of charges they face each month from the rent collected on their units. By working on a commission and either a flat but relatively high management fee to cover these charges, or a combination of a management fee and just some charges, we have been able to assist managers keep their owners happy.

Many of our astute clients have sought our help in getting their letting appointments in order. In recent weeks we have had clients who have had to justify their charges to the Office of Fair Trading. It is times like this when our clients realise the importance of getting all the seemingly little things about their letting appointments right.



Level 15 167 Eagle Street Brisbane QLD 4000
GPO Box 3311 Brisbane QLD 4001
Ph 07 3007 3777 Fx 07 3007 3778

Delfin House
235 Varsity Parade Varsity Lakes QLD 4230
PO Box 482 Varsity Lakes QLD 4227
Ph 07 5562 2959 Fx 07 5575 7803

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info@mahoneylawyers.com.au
www.mahoneylawyers.com.au