



Management Rights

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Introduction to buying Management Rights in Queensland

Management Rights originated on the Gold Coast in the mid 1970's.

Some History

Management Rights originated on the Gold Coast in the mid 1970's. People were buying units in developments for investment purposes. These developments had two primary needs; someone to caretake the development; and someone to let out the units so the unit owners could get a return. An idea arose to satisfying these needs by buying a unit in the development and using the unit both as their residence and a base in which to operate an onsite caretaking and letting agency business. This system of management has proven to be so successful that there are very few large developments in Queensland which do not have Management Rights in place.

The Basics

Management Rights always involves a Community Titles Scheme and at least one Body Corporate. A Community Titles Scheme is a development which includes Lots (e.g. Home unit, town house or villa) and common property (e.g. Internal roads, swimming pools, etc). Every Community Titles Scheme is administered by a Body Corporate. Every Community Titles Scheme is also governed by the Body Corporate and Community Management Act and modules of regulations. The Standard Module regulations usually apply to Community Titles Schemes where the Lots are predominantly owner occupied. The Accommodation Module Regulations usually apply to schemes where the Lots are predominantly let out.

Management Rights for a particular development usually include-

- Ownership of real estate within the development
- A manager resident in the development
- Caretaking of common property
- An onsite letting agency for lots in the development.

The caretaking and letting agency constitute the Management Rights business.

A number of variations to the Management Rights system have come into play over the years. For example, while traditionally the owner of the Management Rights resided onsite and operated the business, nowadays with the advent of large developments and large companies owning Management Rights, in some cases the manager is an employee of the Management Rights owner.

Real Estate Ownership

The real estate which is purchased as part of the Management Rights package usually includes a residence and an office/reception area.

Ownership of the real estate also has attached to it the right to be aware of and involved in the running of the development through membership in the body corporate.



Caretaking and Letting Agreements

Caretaking and Letting Agreements with the body corporate are assigned or granted to a Management Rights purchaser. The important things covered in the agreements are-

- The duties to be performed by the manager
- In the case of the Caretaking Agreement, the remuneration to be paid to the manager
- The duration of the agreement
- The circumstances under which the agreement can be transferred
- Circumstances under which the agreement can be terminated
- Agreement by the body corporate not to grant similar agreements to anyone else.

There are some provisions in the Body Corporate and Community Management Legislation which impact on these agreements. In particular-

- The duration of the agreements is limited to ten years at any time for a Community Titles Scheme governed by the Standard Module Regulations and 25 years at any time for a Community Titles Scheme governed by the Accommodation Module Regulations
- If there is a serious breach of obligations by the manager the body corporate is entitled to follow a procedure to force the manager to sell the Management Rights business and the real estate.

Letting Agency Business

To operate the Letting Agency Business the manager must obtain and maintain at least a Resident Letting Agents Licence which is obtained pursuant to the PAMD Legislation. To obtain this licence the purchaser must among other things-

- Complete an approved educational course
- Reside in the development
- Have an agreement with the Body Corporate authorising the purchaser to conduct a Letting Agency within the development.

Management Rights do not give the manager exclusive rights to let property in the development. However if structured properly they prevent anyone else operating an onsite letting agency within the development. This should give the manager a commercial advantage against other agents who can only offer offsite agency arrangements.

Purchasing Management Rights

If you have any questions about Management Rights we would be happy to answer them without fee and without obligation.

You should always buy Management Rights through a licensed real estate agent who specialises in Management Rights.

To estimate what you can afford to buy you may wish to get some preliminary advice from a financier. Either ourselves or the agent can put you in touch with financiers who specialise in financing Management Rights and who are usually happy to provide preliminary advice without fee or obligation.

The aspects that then need to be covered for the buyer involve:-

- Practical family and estate needs and planning
- Taxation implication
- Stamp Duty

There are various entity set ups which can come into play. Apart from considering whether the buyer should be a company, or a company as trustee, or one or both of the individuals involved, there is also the question of the split of the assets.

Because in purchasing Management Rights, there are normally two (2) Contracts, with one (1) to deal with the purchase of the manager's lot and the other to deal with the purchase of the business, there can be separate entities between those two (2) components.

Therefore the configuration of parties to be buying the Management Rights can be extensive.

Dealing firstly with the purchase of the manager's lot, there is also a consideration of the GST applicable. In order to make the transaction the sale of a "going concern" for the purpose of the GST Law, it is necessary that all of the assets necessary to transfer the business are transferred from the seller of the business to the buyer of the business. Obviously if the unit is treated differently to the business then there has to be a device or an arrangement to ensure that the going concern provisions can apply. To cover that arrangement, our firm evolved a system of licensing the use of the lot, which is now common place in such transactions. This involves the creation of a license to use the manager's lot for the purposes of the business which is given to the seller of the business as an entity by the seller of the lot, (in the case where the two (2) parties, as seller or buyer are different). Then the business Contract provides that the buyer of the lot will receive a transfer of that licence so that all of the essentials for the conduct of the business are duly transferred under the business Contract.

The entity purchasing the managers lot is purchasing both a residential apartment and an area where commerce is conducted. Because it is a residence it will have special arrangements under both taxation and stamp duty law. For the buyer to avail of these arrangements, it is necessary to make the buyer an individual i.e. a director or a shareholder, in the event that the buyer is a company, or both husband and wife if they are both involved. Therefore, the manager's lot should be purchased by the parties who will reside in it as their principal place of residence if that can be achieved. This will give both a capital gains tax free taxation situation when the lot is sold in the future, as well as a stamp duty concession in respect of the purchase on the basis of the lot being a principal place of residence.

The structure for purchasing the business involves close consideration by the buyer. The purchasing entity may be an individual, group individuals, a company, or a company as trustee.

The main consideration in making a choice are the tax implications for your particular circumstances.

Before you make a decision to buy a particular Management Rights you should consult your accountant to ascertain and if necessary establish the best entity to buy the Management Rights. Purchases can be delayed and stamp duties can be increased if you fail to do this before you sign a purchase contract.

Once you have made a decision to buy a particular Management Rights the agent will prepare contracts and arrange for them to be signed by you and the seller. An agent specialising in Management Rights sales will ensure that these contracts have all the usual terms and conditions but you should always have documents checked by your solicitor before you sign them.

The main consideration in making a choice are the tax implications for your particular circumstances.

A typical Management Rights sale contract will be conditional upon-

- Your solicitor being satisfied with the Management Rights documentation eg. Caretaking and Letting Agreements, Body Corporate By Laws, etc.
- You obtaining finance approval for the finance required to complete the purchase
- Your accountant verifying that the net operating profit for the business for a particular period of time is a particular amount
- The body corporate consenting to the caretaking and letting agreements being transferred to you.

In buying Management Rights it is important that you employ accountants and solicitors who specialise in Management Rights. The laws in Queensland have been designed to accommodate the Management Rights industry. However they are complex and you need the right advice to ensure that you are properly informed and the documentation relating to the Management Rights you are purchasing is legally correct.



Why Choose Short Punch and Greatorix

Our firm has helped to develop the concept of Management Rights and its activities spread over the past thirty (30) years.

Extensive Knowledge and Expertise

Our firm has helped to develop the concept of Management Rights and its activities spread over the past thirty (30) years. Our Management Rights expertise has developed through our acting for various clients being the developers of the buildings, who required to put in place concrete arrangements for onsite management clients who have acquired Management Rights over the years, assisting Body Corporates to ensure proper working arrangements are made in their legal Contracts and By-laws, and acting in concert with politicians and the various government departments when the law has been initially made, or fine tuned over the years.

In Queensland, the particular legislation is covered in the Body Corporate and Community Management Act and the Property Agents and Motor Dealers Act which are pieces of law where our firm assisted both industry organisations and the government officers, to produce the practical and legal arrangements.

Involvement of Capable Personnel

We have a large number of partners and staff assisting in Management Rights. This involvement is spread over (4) partners actively involved in Management Rights transactions, and one (1) partner particularly conducting litigation and dispute resolution, as well as several associates and solicitors working with our paralegal teams.

Personal Attention to Clients

When we handle a matter for a person or company buying or selling Management Rights, the solicitor acting for the client forms a team to handle the various aspects of the transaction but always remains personally involved and in control of the matter. Some other firms take a "production line" arrangement to handle their client's transactions where the matter is moved on to staff without consistency of knowledge and involvement.

Reasonable Expenses

Our firm does not set out to provide the cheapest of fees or quotes to obtain its clientele. However, it always ensures that its fees are reasonable and in keeping with charges imposed by other lawyers knowledgeable in the industry. Over thirty (30) years of involvement for buyers and sellers of Management Rights has produced satisfied clients who continually return to us for further activities because we have acted and charged in a reasonable manner. We know what other firms charge and we know the quality and value of their activity. We apply this knowledge to ensure that we provide the best service possible to a large number of clients at competitive rates, without having to charge for unnecessary work.

We are also aware of the means of cost saving on external expenses where we can save on stamp duties, search fees, Body Corporate charges etc.

Integration with Other Consultants

We interact quickly and capably with all of the other parties who will be involved in your transaction including knowledgeable accountants, bank representatives and other financiers, Body Corporate Managers and Government licensing departments. All of this ensures a smooth transaction where the pieces fit together.

There are four SP&G Partners (listed below) actioning Management Rights transactions:

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Queensland Wide

Our firm has extensively assisted clients throughout Queensland with their management rights transaction and we have no difficulty in providing our service to clients wherever the client is situated or in respect of any property arrangements within Queensland. We have clients all the way from Port Douglas to Coolangatta involved with us.

In fact, we also handle New South Wales management rights transaction but because of the differences in the legalities, we normally act in conjunction with a knowledgeable New South Wales firm to achieve the best protection for our clients.

We are very proud of our expertise, our friendly and capable personnel assisting us and – of course – our many satisfied clients.

We look forward to aiding you and fully providing for your transactional needs.

