

BACK TO BASICS

MANAGEMENT RIGHTS UNDER THE BODY CORPORATE AND COMMUNITY MANAGEMENT ACT

CARETAKER AND LETTING AGENT - EXERCISING AN OPTION AND ADDING AN OPTION TO RENEW

A valid and current Caretaking Agreement and Letting Agreement (“Agreement”) with a healthy term remaining is one of the most valuable assets in a management rights business. This is recognised by anyone with an interest in the business, including banks and potential purchasers.

It is therefore imperative that Service Contractors and Letting Agents (“On-Site Managers”) understand the process that is involved in both exercising an option and adding an option to the term of their current Agreement.

Exercising an Option to Renew

The effect of not exercising an option can be disastrous. If an On-Site Manager does not exercise an option in the required time frame, there is no obligation on the Body Corporate to either re-engage or re-authorise the On-Site Manager as a Service Contractor or Letting Agent. If an option is not correctly exercised, then the On-Site Manager has the potential to lose one of the most valuable assets in their business.

On-Site Managers should:-

1. Check the current term of their Agreement and when it ends;
2. Verify whether there are any current options to renew;
3. Carefully read the option clause and any other clauses affecting the option to see how and by when an option must be exercised; and
4. Diarise so that the option is exercised in accordance with the Agreement before the period to exercise the option has expired.

Adding an Option to Renew

Adding an option to an agreement sounds a simple task. However, failure to follow the correct procedure can end in disaster.

Although there are ways to refresh the term of the agreement up to ten or twenty-five years (depending on which module of regulations applies to the Scheme), the maximum length of an option is the lesser of either:

1. Five years; or
2. Until ten or twenty five years (depending on the module) from the date of the General Meeting approving the motion to add an option.

All motions seeking to add an option must be presented with the correct forms, and can be passed by ordinary resolution in a General Meeting of the owners by secret ballot where no votes are exercised by proxy. There are important timing

requirements as to when the motion must be lodged, and how often such a motion can be considered.

Even though a health term looks great on paper, paperwork itself does not earn the vote of the owners, and it is up to the On-Site Manager to develop a good working relationship with the Body Corporate so that there is incentive for the Body Corporate's owners to approve the addition of an option in future years.

Short Punch and Greatorix deal with these types of matters on a daily basis, and are able to assist you with:-

1. Exercising an option;
2. Adding an option to your current Agreement;
3. Preparing new Agreements if required;
4. Explaining the options available to you if you fail to exercise an option within the require time frame;
5. Incidental dealings with the Body Corporate and owners.

Please contact **Matthew Brook, Senior Associate** if we can be of any assistance to you.