



# Tips for selling Management Rights in 2024

**Preparing your management rights business for sale can be a daunting prospect. Being prepared and having the right professionals to guide you through the process can make all the difference.**

Planning for sale should start before you've even settled on the purchase and any issues encountered during your purchase, unless resolved, will still be issues when you come to sell. Fixing inherited issues will not only assist with a smooth sale process but may improve your business operations and potentially net profit for the duration - why wait to improve your asset until you're ready to sell when you could reap the rewards throughout?

"Don't put off 'til tomorrow what can be done today."

Purchasing a management rights business can be costly, spend time reviewing the



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detailed financial and legal due diligence information you commissioned and seek advice from experts on areas you can focus on improving and make the most of the information you've paid for from day one.

## Letting appointments

Form 6 letting appointments are transferable and provided the owners were notified that the agreements have been assigned and appropriate evidence of that notification is kept on file, there is no requirement to have all letting appointments updated in your entity's name.

Similarly, you may have inherited some of the old PAMDA 20a Agreements and provided no changes have been made to the terms of those agreements (including any changes to fees charged) then these may still be legally appropriate to support the income generated from those units without change.

But why not take the opportunity to ensure you have consistent letting appointments, addendums and schedule of fees and charges prepared in line with current legislation and in your name? In part, you will be selling your relationship with the unit owners and knowing the owners have engaged you directly, as the vendor when presenting for sale, can instil confidence in a buyer about the relationships they are acquiring.

Similarly, the better the state in which you keep your records the more attractive the package you are selling will be. Digging through musty filing cabinets and dog-eared paper files to review letting appointments

with years of updates and notices of increased fees and charges is a lot less appealing to a new business owner and their advisors, than being presented with organised records.

First impressions matter and one of the first impressions of the business you are selling is the presentation of records to a prospective buyer's accountant and solicitor during the due diligence process. Having organised and preferably soft copies of your business records not only improves the quality of the package for sale but should make your life easier whilst running the business. If you don't already, consider filing all of your agreements, addendums and variations to an online storage system - if you use a Cloud-based Property Management System you can generally upload documents so all in one place. Make things easier whilst running the business for yourself, your accountants and auditors as well as being prepared for when it comes time to sell. ►



- ◀ Taking the time to review and update filing of your letting appointments prior to sale provides you with the opportunity to rectify any issues and ensure you have everything ready to present during due diligence, making for a smooth sale transaction.

### Fees and charges

Regularly reviewing charges levied can not only improve your revenue and ultimately net profit but also promotes confidence in your owner relations and strength in the letting pool.

Most agreements authorise an annual CPI or other increase for fixed charges like cleaning/linen. Actioning appropriate increases allows businesses to maintain profit margins despite increasing labour and other costs.

In the aftermath of the COVID pandemic, operators may have been anxious to increase charges for fear of losing units from the pool but with inflation rising you can't afford not to pass on increases without risking significant reduction in the value of your business when it comes time to sell.

### Adjusted net profit for sale

I'm the first to proclaim that managing costs is crucial in maximising profits, no matter how much income is generated if costs are not well managed returns suffer.

That being said, selling your management rights is a significant transaction and



*Making the verifying accountant's job easier, can only yield positive results.*

the cost of having accurate figures prepared for sale pales in comparison to potential reductions to your sale price resulting from DIY figures not appropriately adjusted in line with industry practices.

An adjusted net profit report prepared for sale by an industry professional is invaluable in the presentation of your business for sale. Whilst adjustments are not necessarily complex, the industry is ever evolving and accepted adjustments when you purchased may no longer be accepted when you're ready to sell. Particularly with regard to labour, for instance you may have bought on figures prepared on the basis the business be run by a two-person full time team with the only labour costs being

for cleaning. If you've increased the rates, occupancy and revenues of the letting business, and you do engage additional staff for admin/front of house services - you shouldn't expect to have your net profit for sale prepared excluding additional labour costs that you've demonstrated are required to generate higher returns. The net profit on which you sell should, notwithstanding some standard cost allowances/adjustments, essentially be what a purchase could reasonably expect to achieve in a 12-month period.

*The information, opinions or conclusions provided above are generic in nature and do not express individual advice or recommendations. You should always consult a suitably qualified professional before taking any course of action outlined above. Holmans welcome any queries you may have in relation to the above matters.*

If you engage workers for duties that one of the two-person management team would otherwise be responsible for, then an appropriate adjustment may be made to the net profit for sale.

Any adjustments made, especially labour adjustments, must be verifiable by the purchaser's accountant to minimise the impact on contracted sale price. It is not uncommon for sales to fall over during the financial verification process as a result of lost confidence in the net profit and any savings from not having professionally prepared figures will be long forgotten as the sales process progresses.

The easier it is for the purchaser's accountant to verify the figures, the smoother the sales process will flow.

The purchaser's accountant will generally seek to verify the net profit for a recently completed 12-month period, which may differ to the net profit on which the contract is based where time has passed between your accountant preparing figures for sale and a contract being signed. Making the verifying accountant's job easier, can only yield positive results.

Having well-kept books, consistently up to date is another way you can avoid issues during the financial verification process. ■



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# Selling?

## Be prepared well in advance...



**In previous *Tips for Selling Guide*, I authored for *Resort News* I began with comments about how the quality of a prospective buyer had become an important factor in any management rights sale. That is still the case, more so than ever before.**

Before you actually list the business for sale there is so much that can, and should be done, to make the sale as smooth as possible. The selection of the buyer is however absolutely critical, and it is one of the first questions I ask a seller when I learn of a potential sale contract.

### **Qualified buyer**

Some bodies corporate fail to properly investigate an incoming manager's qualifications and experience, they accept anyone put forward and then find they have a poorly performing manager. As a consequence of this, bodies corporate today, quite understandably, are demanding that proposed new managers are properly qualified and experienced, or if not, that they have undergone appropriate training, both theoretical and practical.



**John Mahoney**, *Mahoneys*

There used to be a misconception that a body corporate could not refuse to consent to an assignment unless the proposed new manager was a criminal or a bankrupt. That is, and always has been, far from the case. A body corporate is entitled to be satisfied that a proposed new manager has the qualifications, experience, and financial capacity to perform all of the duties under the management rights agreements.

You should therefore properly vet any proposed buyer to make sure that the buyer will be acceptable to the committee. If the buyer is a new entrant to management rights, there are various training and educational opportunities available in the marketplace that you should insist the prospective buyer undertakes.

The ARAMA induction course is, in my view, a must for such buyers. In addition, new entrants should, for their own benefit, source and undergo training in regulatory compliance and if necessary, some hands-on practical training.

If not, there is a very real possibility of experiencing problems with the assignment process, huge legal fees from the body corporate's lawyer and every likelihood of the assignment being rejected.

If the buyer has held management rights previously ask to see references from those bodies corporate or committee members. If such references cannot be provided, be prepared for your body corporate to refuse consent to the assignment.

### **Letting appointments**

Any proposed seller should check the letting appointments. POA forms 6 are automatically assignable but not all PAMD forms 20a. Ideally, you have by now had all forms 20a replaced with new forms 6 but if not, and you are relying on these, for them to be assignable (depending on the version used), they should have the assignment section ticked and initialled, or you will have to obtain the

consent of all owners to an assignment to the buyer.

Almost without exception, buyers are insisting that at settlement the purchase price be reduced for non-compliant appointments. We have seen purchase prices heavily discounted, and some contracts terminated because the sellers did not want to, or were not able to, produce compliant appointments.

### **Management rights agreements**

Next, check your body corporate agreements.

Locate copies of all the relevant agreements with the body corporate, copies of the caretaking and letting agreements, deeds of assignment, deeds of variation and the like. If my firm has acted for you, you would have all these documents in the indexed binder or on a USB stick we provide to our clients after settlement of their purchase.

Get the real estate agent you have selected to scan electronically, and/or take photocopies of these to give to prospective buyers. You should also give your solicitor copies of these documents for two reasons. ►

- ◀ First, your solicitor can check that everything is in order - for example, that options have been properly exercised. Second, if the buyer's solicitor or financier raises questions about the agreements during the transaction, your solicitor will be able to deal with the matter quickly and efficiently.

### Term of agreements

The term remaining on your agreements is critical. Unless you have long-term agreements with your body corporate, you should be thinking about how the term of your agreements will impact on a future sale as early as the time you buy.

You must also consider that most (if not all) buyers looking at a complex in the standard module will (these days) want close to the full 10 years to run on agreements when they purchase. With complexes in the accommodation module, most buyers will be looking for at least 15 years, depending of

course on the amount being borrowed, but many buyers and their financiers want as close to 25 years as possible.

The transfer fee rules will not penalise you just because you sell within two years of getting a new agreement or adding a new option. It is only if you sell within one or two years of becoming manager that the transfer fee applies: three percent of the business sale price in year one, or two percent in year two.

Adding a new option to an existing agreement is technically prescriptive. Apart from getting a new agreement, this is the only way that the term can safely be extended. Because of these technical requirements, many lawyers and body corporate managers have failed in their attempts to extend the term.

Because of our involvement in the legislative changes (in fact, we designed the prescribed statutory form that must accompany the motion to add the new option) we

have been called upon on a number of occasions to remedy ineffective additional options.

### Termination clause in agreements

Much has been written about the Gallery Vie QCAT decision and the changes that financiers want made to the termination provisions in management rights agreements to deal with the problem created by that decision.

If you have not already done so, you should have your lawyer check your agreements to make sure they are Gallery Vie compliant. If they are not, you really should take steps to amend the agreements to deal with the issue.

The changes can be done in a simple and straightforward way but do require an AGM or an EGM, as it is increasingly rare that a financier or a body corporate committee will accept this being done as part of the assignment. Most managers are dealing with the matter at the same time as they are topping up their agreements.

### Financial figures

You will need up-to-date financial figures. Take the time and spend the money to get up-to-date figures for sale purposes from an accountant with management rights expertise. So many sellers rely upon outdated financial figures or on figures that are not really prepared for sale purposes.

I have seen a number of sellers grossly underestimate their net profit and find that the buyer's accountant has verified a net profit well in excess of that shown in the contract. With multipliers of around five and above, a difference of only \$5000 will cost you more than \$25,000, that's enough to cover a fair component of the agent's commission. Make sure you get the most up-to-date figures you can. The buyer's bank will want figures no older than a month or two.

Make sure your body corporate salary has been updated to take into account the latest CPI increases or any market review that might be permitted under your agreement.

### Get expert help – above all, use the experts.

You might think that you don't need a specialist accountant to put together your net profit figures. As any honest accountant will tell you, it is a very specialised area.

As a general rule, figures prepared according to normal accounting standards will show a net profit lower than the way in which it is calculated for sale contract purposes. Only a specialist accountant will be able to produce accurate 'for sale' figures.

You might also be tempted to use a local or suburban lawyer because they offer a cheaper rate. Although, as a general rule, there are fewer legal issues when you are selling than when you are buying, I have seen so many sellers get themselves into trouble because they have tried to save money by using a lawyer who does not specialise in this area.

You need someone who understands management rights to be able to deal with any issues raised by the buyer or the buyer's solicitors. Often, we are able to salvage a sale transaction because of our expertise and ability to convince other solicitors of our view of the legal position.

Perceived savings on commission might encourage you to market your business yourself rather than use an agent and sometimes you might succeed. But there are downsides.

A good agent will help guide a buyer through the purchase process and often keep together a sale that might otherwise fall apart. I have seen that happen on more than one occasion.

A good agent should also pre-qualify a buyer to ensure that your time is not wasted by unqualified buyers or buyers who will not get finance approval.

On the other hand, if you are able to find a buyer yourself, then an experienced lawyer will be able to handle contract ■



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