# SALE OF MANAGEMENT RIGHTS

## A GUIDE FOR BODY CORPORATES

bosslawyers.com.au

boss. LAWYERS

# WELCOME

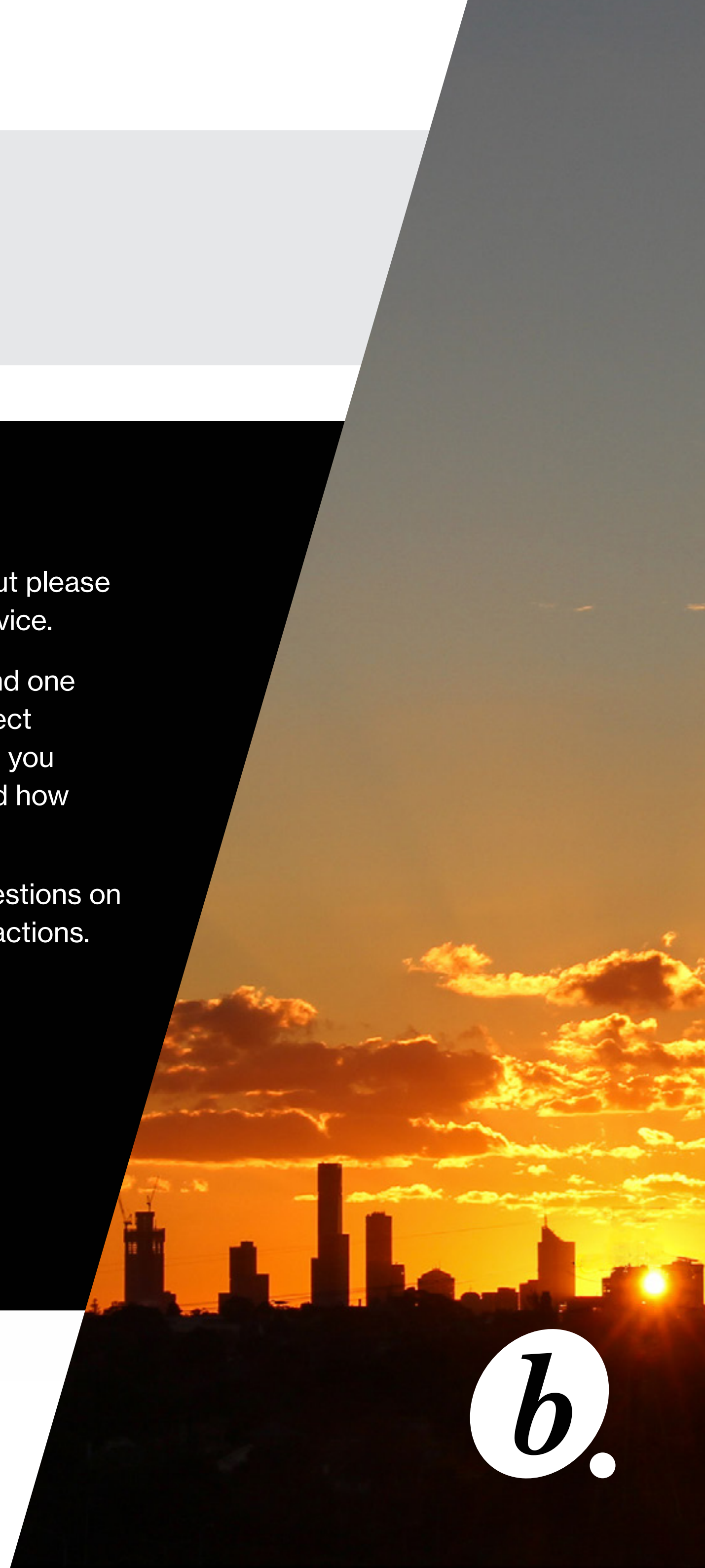
## Welcome to BOSS Lawyer's guide for body corporates on the sale of management rights.

This guide will help you to better understand your rights and responsibilities. It gives you an overview of the sale process, but please bear in mind that it's not to be relied on in the place of legal advice.

Transferring management rights can be a complex process, and one that must be handled with care. We're here to help you to protect your interests. We translate legal jargon into plain language, so you can quickly understand your position, what you can expect and how to get there.

Please ring us at any time. We'll be pleased to answer your questions on the sale of management rights, or any other commercial transactions.

Tel: 1300 267 711



## WHAT ARE MANAGEMENT RIGHTS BUSINESSES?

Management rights businesses provide management services to residential complexes that fall within a community titles scheme. The person who purchases these rights (the manager) will typically live on site as part of the agreement so will also need to buy, and live in, the manager's unit.

Businesses are sold on a multiple of the net income they earn; therefore, while some people buy management rights businesses for lifestyle reasons, others buy for their expected return on investment.

## WHEN DID THEY GET STARTED?

Management rights businesses started in Queensland in the 1970s when developers started building large residential complexes and holiday accommodation. They saw the value in having on-site property managers, so created a business opportunity for an owner to fulfil this function.

Today, the industry is still most prevalent in Queensland but is growing in other States – particularly New South Wales, Victoria and Tasmania. There can be management rights businesses in any type of multi-unit residential development, including student and senior accommodation, and holiday and corporate lettings.

The sale of management rights occurs on a regular basis, but it can be a complex process and needs independent legal advice.

## WHAT DOES THE MANAGER DO?

The manager is paid a salary by the body corporate to maintain the property to an agreed standard but can also make additional income from individual owners. The two main components of their role are caretaker services and lettings.

**CARETAKER ROLE**: The manager needs to maintain the common property as specified in their contract. This could include duties such as gardening, sweeping pathways, putting bins out, maintaining pools and tennis courts. The body corporate pays the caretaker to provide these services for an agreed period of at least one year, but generally a minimum of 10 years. The body corporate also pays for the materials the manager needs to fulfil these tasks.

**LETTING AUTHORISATION**: With owner consent, the manager provides letting services to investor owners. The manager earns commissions and management fees from securing quality tenants, and additional income from supporting landlords in other ways. For example, they may take care of repairs and maintenance in the unit or provide cleaning or linen services for holiday rentals.

---

If the manager is not properly fulfilling the duties of their role, the body corporate may be able to remove them. We recommend speaking to one of our experienced lawyers if this is the case.

## WHAT IF THE MANAGER WANTS TO SELL THEIR BUSINESS?

The manager needs the permission of the body corporate before they assign (or on-sell) their rights to a prospective buyer. The body corporate needs to feel comfortable that the buyer can perform the duties of the role. The body corporate committee will usually determine the suitability of the buyer, unless it was already determined the decision would be made at a general meeting.

## WHAT IS THE SALES PROCESS?

There is no specific timeframe for a management rights contract of sale. However, when the terms are agreed, settlement usually takes 60-90 days. The sales process, known as assignment, is as follows:

## DUE DILIGENCE

The potential buyer will assess the business and analyse its finances to determine its feasibility. This stage is usually confidential between the manager and the prospective purchaser.

## NOTIFICATION

The first official notification of sale will likely come from the seller's solicitors. They will request body corporate approval of the purchaser and provide legal documentation to support assignment.

*At this point, the body corporate should seek independent legal advice.*

## LEGAL ADVICE

A solicitor should look at all the documentation the body corporate is being asked to sign or agree to. A legal expert will need to assess the contracts overall, and in relation to each clause or warranty. They will look at:

- **Consent to assignment**
  - Does this consent accurately outline all body corporate parameters and conditions?
- **Deed of assignment**
  - Is it agreeable?
  - Does it correctly state the terms of the management rights agreement?
  - Does it include any guarantees the body corporate is seeking?
  - Does it provide any guarantees or warranties?

Any reasonable legal costs that the body corporate incurs during assignment will be reimbursed by the seller. This payment cannot come from funds relating to management rights, ensuring that the body corporate does not pay these fees indirectly either.

However, depending on the complexity of assignment, the body corporate may be liable for some fees for legal advice regarding specific terms of the agreement.

## DECISION MAKING

The body corporate has 30 days to make their decision on a buyer after they have received all the 'reasonably necessary' information.

This includes details on the proposed buyer's:

- Experience
- Qualifications
- Character
- Competence
- Financial standing
- Proposed training
- Terms of transfer
- Performance at interview
- Other information provided for in the management rights

When assessing this information, the body corporate is legally required to approve any reasonable purchaser. As such, it is highly unusual for a prospective buyer to be rejected, but it can be done.

If the body corporate is considering rejecting a purchaser, we recommend seeking legal advice on whether your concerns are valid reasons for rejection. This is important as you could be liable for any resultant loss should your rejection be successfully challenged.

## CONDITIONAL ACCEPTANCE

It's also possible to impose conditions before accepting the proposed manager. This is not a re-negotiation of management rights, but extra protections to ensure the job is fulfilled to a reasonable standard.

However, the body corporate is limited as to what is legally considered reasonable. Acceptable conditions include a Deed of Covenant, which further binds the purchaser to the terms of the agreement, or a guarantee from the buyer to undertake training to perform the role to the required standard.

## TRANSFER FEES

Depending on how long the existing management rights have been held, the body corporate may be eligible to receive a transfer fee from the seller. This fee will be 3% of the purchase price if sold within the first year, and 2% if it is sold in the second year. After this two-year period, the fee does not apply.

## SETTLEMENT

Prior to settlement, make sure all the body corporate's legal fees have been paid and any conditions have been met. Settlement can happen when all the terms have been agreed between the buyer, seller and the body corporate. Assignment completes when all three parties have a signed copy of the Deed of Assignment.

## WHERE TO GO FOR HELP

We hope this guide helps you better understand your rights and responsibilities. As we mentioned at the start, this is an overview of the sale process and not to be relied on in the place of legal advice. Transferring management rights can be complex. Thankfully, we have a team of experienced lawyers ready to lend you a hand.


**BRISBANE HEAD OFFICE**

Level 27, Santos Place
32 Turbot Street
Brisbane QLD 4000

Tel: 1300 267 711
info@bosslawyers.com.au

**bosslawyers.com.au**