

TIPS FOR MANAGEMENT RIGHTS IN NSW

Choose your Financier Carefully

There is a common misconception in some sectors of the management rights industry. It goes something like this: 'I understand Queensland MLRs therefore I have got a handle on the industry generally'.

While there are similarities to the Queensland model in other states there are also many traps for young players. Having said that, there is some real value to be had in NSW for the well researched investor. If the old adage about seeking expert advice is true for Queensland then it's doubly so in NSW.

Choose your financier carefully and ensure they have a working knowl-

edge of the NSW legislation. Also make sure they have access to an expert management rights valuer with experience interstate. The legislative environment in NSW is not as well progressed as Queensland and this is reflected in the multipliers. However, lenders who have taken the time to understand the NSW market remain comfortable with providing finance for selected good quality properties.

There are many considerations relating to purchasing management rights in NSW. From a lender's point of view two of these are critical.

First, unlike Queensland, the *Strata Schemes Management Act* in NSW does not allow for a lender's rights

and responsibilities. In Queensland the *Body Corporate & Community Management Act* addresses the obligations of the body corporate when a lender is relying on the management rights agreements as security. The corresponding legislation in NSW does not currently do so. As a result a deed of consent must be entered into between the bank and the owners' corporation. Those of you with experience in the industry will recall that prior to 2003 these deeds were also used in Queensland. The problem that often arises is that the lawyers advising the owner's corporation will request changes in the bank's deed of consent. The outcome is that often there ensues a back and forth

process of negotiation around the content of the deed. The process chews up time and money as the parties attempt to ensure that their particular, often conflicting, wishes are satisfied.

Experienced specialist MLR lenders have pre-empted this problem in NSW. In consultation with the industry it is possible to draw up a template deed that, for the most part, satisfies the requirements of all parties. In this way most (if not



Mike Phipps
National BDM,
Management Rights,
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The Suncorp Management Rights Team would like to thank Jake Clarke and Mark Ryall for their continued support and assistance with providing "quality sites with hassle free finance".



From left to right: Jake Clarke (Industry Sales Professional), Greg Kingston (Suncorp), and Mark Ryall (Specialist Industry Finance Consultant).

**Talk Management Rights with:
Greg Kingston Gold Coast 0407 370 048**

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tips for management rights in NSW

One Voice for NSW

Year 2006 commenced with four independent groups of management rights operators in NSW. By October we saw the formation and first annual general meeting of an incorporated not-for-profit association representing management rights operators throughout NSW: the Australian Resident Accommodation Managers Association (NSW) Inc. These four independent groups of resident managers operated in Sydney, Byron Bay, Mid North Coast centred on Port Macquarie and Forster and in Merimbula on the far South Coast. While Col Myers, a Southport-based solicitor, had been working with each of these groups, they were mainly local bodies addressing local issues.

ARAMA has recognised the significant industry benefits if resources and experiences could be shared as part of a state and national approach. QRAMA, established in 1991, had recognised a similar need to establish links with interstate operators of management rights. In early 2006, ARAMA established a state management committee (with two representatives from each branch) that looks at state issues such as legislative and licensing, communication with other industry stakeholders and provides support for members to improve practices and operating issues.

ARAMA members have been



provided with access to the resources of QRAMA, with recommended operating practices and advice on national issues such as GST. ARAMA welcomed an approach from Resort Brokers Australia who shared our vision for improved cooperation and coordination nationally. Resort Brokers funded part of the development costs ARAMA.

ARAMA's inaugural AGM in October 2006 brought owners of management rights in NSW together to set common objectives and work practices. The next challenge for the state committee has been meeting with other industry stakeholders. These industry stakeholder meetings have all been constructive and the efforts and objectives of ARAMA have been appreciated in every case.

One such meeting was with the Institute of Strata Title Man-

agers, recognising that co-operation and understanding between the resident manager and the strata manager is key part of the success of any scheme.

We met with the Real Estate Institute and have been invited to have further discussions with this peak real estate industry body on holiday letting practices.

ARAMA has met with the office of the minister for Fair Trading and with the Office of Fair Trading. As we operate in a highly regulated environment, dialogue with the regulators is an ongoing issue, especially as both strata legislation and licensing requirements have a great impact on the operation of our industry.

Two state committee members addressed the Owners Corporation Network. Readers will recognise as correspondents to Resort News,

prominent OCN members Stephen Goddard and Jimmy Thomson.


This meeting highlighted the lack of understanding by owners of the role of the management rights model and the much wider responsibilities that the resident manager has than a caretaker/building manager who does not own a unit in the complex, is not a member of the owners corporation, is not licensed by OFT and does not operate a letting business for owners.

A common point from the discussions was the lack of understanding by other stakeholders of the role and benefits provided by the resident manager, an issue that needs to be addressed by ARAMA and its members. While the owners in holiday complexes generally understand the role of the resident managers as an owner, letting agent and caretaker-

all) of the possible owner's corporation objections to the deed's standard content are addressed from the outset. Saves time, money and stress which has got to be a good thing.

The second critical matter is the term of the agreements. Following changes to the NSW legislation in 2003 (the changes in Queensland in 2003 are coincidental in terms of timing) the term of the management agreement was limited to 10 years. The term of the exclusive agreement to provide letting services was not included in this restriction. While the changes were not retro-

spective the net result is that post 2003 agreements will often have differing terms. From a lender's viewpoint this creates some challenges. Given that MLR value is, to some degree, predicated on term of agreements, what is the asset really worth? Also, over what term should the finance be provided given the differing termination dates of the assets being funded? Notwithstanding the possibility of a term top up via new agreements these are serious considerations.

In summary, some great opportunities in a growing market. Just make sure you get the right advice! 



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ing contractor, resident owners in city buildings have shown very little understanding of the contracts associated with their property purchase.

Many have failed to understand the limited obligations and services

provided by a caretaking contractor who has not made an investment in the complex by purchasing the management rights. The rights of investor owners are frequently ignored by owner occupiers.



Jeff Beere
President ARAMA

The viability and future of management rights in NSW will be enhanced as we establish our position in the industry. The industry only succeeds if each stakeholder group has clear objectives and understands what other stakeholders are contributing. We must earn the support and respect of other stakeholders by the standards achieved by our members. 

Buying & Selling in NSW

From an accounting perspective there are not a lot of differences between buying in Queensland or NSW.


The following matters need also to be considered when buying a Management Rights business in NSW:

- The type of business structure that will acquire and operate the management rights.
- The profit verification procedure that is required.
- Use an industry experienced investigating accountant.
- Ensuring all Income Tax, ABN and where applicable GST, registrations are in place.
- That finance arrangements are structured to maximize interest tax deductibility
- Recognise the taxation and cash flow implications for debt reduction.
- Trust Account software be compatible with NSW legislation.
- The Trust Account Auditor needs to be a Registered Company Auditor with ASIC

- Unlike Queensland with 3 visits only an annual audit visit is required.
- Stamp Duty rates differ in each state.

The following matters need also to be considered when selling a Management Rights business in NSW:

- Keeping accurate and up to date accounting figures.
- The figures should be prepared by an accountant who knows the industry.
- Ensure all management agreements are current and complete.
- Being aware of the capital gains implications including rollover or deferment of tax.

As with all Management Rights sales and purchasing it pays to seek the specialist advice of those who serve the industry on a day to day basis, especially companies who have been at the forefront of the industry from its inception such as BAMR Window de Stoop 

By Phil De Stoop - Director, BAMR



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Understand What You are Buying!

I know that this sounds basic but it is really important to understand what you are buying when you decide on purchasing management rights in New South Wales.

- What sort of an agreement are you purchasing? One that is caught by the 10-year term limitation or one that is not?
- Are your duties 'do', 'supervisory' or a combination of both?
- Is the remuneration that you will be paid by the Owners Corporation reasonable, inadequate or excessive?
- What are the consequences if the remuneration is excessive?
- Are there any terms in the agreement that can be regarded as harsh or unreasonable?
- Will the agreements survive a later challenge by a rogue Executive Committee?
- Are the by-laws adequate to empower the entering into of the agreements and is there sufficient protection against on-site competition for lettings?
- Does the complex that you are buying into have a history of building problems or disputes with its manager?
- What sort of licence will you need to operate the business and what is the best way about obtaining this licence?

A lot of negative thoughts but you have to look for the negatives to than extract the positives!

The term limitation applies to agreements entered into from the 10 February 2003.


If your agreement was entered into before that date and you have the support of your Owners Corporation, you have an unrestricted opportunity to top up your caretaking agreement. However, do it the wrong way and you forfeit that right forever.

Make sure that your purchasing structure is right. Talk to your accountant or your lawyer to discuss the pros and cons of a company/trust structure. When you have come up with a structure that suits your particular circumstances,

make sure it is allowed under the by-law and the agreements.

Some agreements specifically do not allow a split structure such as individuals owning the management unit for capital gain tax purposes and a company or trust owning the management rights.

Only a specialist management rights law firm like Small Myers Hughes (SMH Lawyers) can give you the answers to the above.

Before you buy, have a talk to Col Myers and understand what you are looking at buying into! 



Col Myers
Partner
SMH

Specialist Management Rights Lawyers

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