

TIPS FOR SELLING MANAGEMENT RIGHTS

Treat Your Sale as Diligently as When You Bought



All vendors at some time in their career decide to sell their management rights. When is the right time? Are there buyers looking? Are the financiers active? What is the market going to do?

We are asked all these questions and plenty more. Regardless of a buoyant market or a depressed economy, there is always some form of prospective purchaser looking for what they imagine is their perfect match. For vendors there is no second chance in what will be a very active 2011 year regarding commercial sales. You will not achieve the desired result unless you professionally prepare for sale and this outcome can only be achieved by blending the near perfect match between you the vendor and your choice of a competent professional industry broker.

Current statistics show that contracts of sale for management rights and the associated real estate are most often terminated because of the failure to meet contract conditions and these are normally in the following order: the verified net profit is incorrect, the due diligence of agreements has legal issues, the manager's real estate fails to value up and the financier's valuation falls short of the contract price and, unfortunately in some cases, the broker handling the sale has sat on their hands throughout the process, failing to

give the vendor the service being paid for. Do not let your management rights be handled by a broker trying to buy your listing. Your listing becomes just that a listing.

None of these contract breakers will occur if you prepare for sale with the same positive professional attitude that you adopted when you purchased. Let's all theoretically adopt the following:

The net profit: a profit and loss needs to be prepared by a qualified industry-recognised accountant and is to be the net profit achieved for the last 12 months of operation, close as possible to the date of contract of sale, deemed to be managed by a two person team, with the actual paid expenses allowed (cleaners, receptionists, handy man, gardener) all included as an industry expense. In certain situations, dependant upon the size of the business and actual work load, some add backs may be applicable. In large net profit managements rights, say \$750K plus, a manager's salary may need to be added as an industry expense.

The vendor's real estate component: this could be a residential apartment with an attached office or, in certain scenarios, a separate office where there are two registered titles. You will require having in the majority of cases a current valuation appraisal by a registered valuer. Both the valuation and the verification report should not be more than three months old.

Check with your industry solicitor that your management and letting agreements are commercially sound and that options have been correctly exercised. If you have less than 10 years remaining on these agreements you will be required, in the majority of cases, to top up your agreements on or before settlement date of the contract of sale.

Remember it is a requirement of the act in Queensland that all your PAMD form 20A's have the assignment clause in place and signed by your investment owner. NSW is treated similarly.

All of the above can be achieved with the guidance, advice and a close working relationship between you the vendor and your chosen full time broker.

Look for a professional management rights broker with a proven track record and the dedication to sell your management rights to achieve the best possible market price given the market conditions at time of sale. The old ways of the past are finished - gone are the days of "let's go to the market and see if we can attract some enquiry".


If the correct attitude is not adhered to regarding your sale, your management rights will become just another listing.

As a vendor you are entitled to achieve the best possible result, however you owe it to yourself to

approach your impending sale with the same dedication you had when you bought the management rights. As a vendor, your ability to achieve the desired conclusion to a contract of sale is 100% dependant upon correct and factual information being collated by yourself and your professional management rights broker.

It should be a very active calendar year as far as management rights are concerned; there is no doubt management rights will continue to sell and settle but only if all listings and pre-sale preparation is handled in a professional attitude that will result in a harmonious conclusion - the settled sale. Remember the following and all vendors should continue to be content.

Select your broker carefully, a full time professional with a proven track record. Present the facts backed up by prepared documentation. Market your management rights at "today's marketable and achievable price".

Have patience and sell to a qualified purchaser with the dedication to go to contract and settle, be totally diligent and the partnership between the vendor and the chosen broker should result in a successful contract of sale. 



Jake Clarke
MR Sales

tips for selling management rights

Use an Expert



In previous articles for this feature in *Resort News*, I said the best advice I can give any potential seller of their management rights is 'prepare for it well in advance'. Nothing has changed. As I said then, that might sound like something fairly simple but it is advice often overlooked, sometimes at significant cost.

But how then should you prepare for a sale?

First, check your letting appointments to see if they contain an assignment clause, as they will only be assignable to a buyer if they do contain such a clause or you obtain the consent of all owners to an assignment to the buyer. It is also an offence for you, in the case of a letting appointment without an assignment clause, to assign that appointment without the owner's consent.

Almost without exception, buyers are insisting that all appointments be properly assignable and assigned at settlement or the purchase price be reduced for non-compliant appointments. In one case I saw a purchase price reduced by

\$70,000 and in others I have seen contracts terminated because the seller did not want to, or wasn't able to, assign appointments.

If your appointments are not assignable, you should consider new appointments (particularly if the existing ones are a few years old as there have been many changes that should be incorporated) or amending the existing appointments to include assignment clauses. We have developed a simple one page amendment document that many of our clients (and sellers to our clients) have used with success.

Next, check your body corporate agreements.

Locate copies of all of 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 of these documents in the indexed binder we give our clients after settlement of their purchase.

Get the real estate agent you have selected to 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. Secondly, if the buyer's solicitor or financier raises questions about the agreements during the course of the transaction, your solicitor will be able to deal with the matter quickly and efficiently.

Then you need to consider the term of your agreements. Unless you have a long-term agreement with your body corporate, you should be thinking about your sale as early as the time you buy.

You must also consider that most (if not all) buyers will want at least six to seven years to run on agreements when they purchase. Some buyers and their financiers want even longer, depending of course on the amount being borrowed – we often receive demands to extend seven to eight year agreements to 10 years.

If you buy with 10 years or so to run on your agreements, you will probably have to sell within

no more than three years to avoid having to get new agreements or a new option added.

If you buy with eight years or less and plan on staying for two-three years or more, you will have to secure new agreements or add another option before you sell.

At least the transfer fee rules are now such that you will not be penalised just because you sell within three years of getting a new agreement or adding a new option. Now it is only if you sell within two years of becoming manager that the transfer fee applies and the body corporate must impose a transfer fee of 3% (in the first year) or 2% (in the second year) of the business sale price.

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 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



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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 including where ruled invalid by the body corporate commissioner's office.

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 your accountant.

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 – enough to cover a fair component of the agent's commission.

Make sure you get the most up to date figure you can. You would expect these to show a higher amount than figures a month or two older but if they don't, you can at least decide what it is you are going to rely upon and include them in the contract.

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.

Above all, use the experts.

You might think that you don't need an accountant or 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 figures.

You might 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 the 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 – so 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.



*John Mahoney
Mahoney Lawyers*

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 down-sides. 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 will also pre-qualify a buyer to ensure that your time is not wasted by people who will not get finance approval.

On the other hand if you are able to find a buyer yourself, an experienced lawyer will be able to handle contract preparation and negotiation. 

tips for selling management rights

An Accountants Perspective

When you purchase your management rights business, the only certainty you have is that one day you will sell it. No surprise there. But what steps can you take to guarantee that the sale proceeds, make it as trouble free as possible and maximise the selling price?

You've gone ahead and purchased your business – probably some years ago – and you feel you could now do with a change of pace. So you talk to your broker, he says to get some sales figures prepared and then you begin the process of advertising your business for sale. What can you do to guarantee that once you have an expression of interest from a likely buyer that the expression turns into a hassle-free sale and at the price you are happy with?

I have been involved in the taxation and accounting-side of the buying, selling and operation of management rights for many years and have observed and noted the features that distinguish a successful management rights operator.

From my accountant's perspective, I strongly recommend you take the following steps from the moment you purchase your management rights:

Treat your new acquisition as a business

Cultivate and maintain a positive and friendly relationship with the body corporate committee from your first day in the job

Ensure you only use accountants and lawyers who are experts in the field of management rights

Plan ahead so you are ready to list your business when the time is right

Ensure your Form 20As are correctly executed and have valid assignment clauses and accurate charge rates (start this process at least 12 months before the anticipated sale date)

Ensure you have executed any options to extend your body corporate caretaking agreement

Check the annual CPI increase in the body corporate salary has been taken up

Talk (early) to your accountant about ways to enhance income from your business or to develop additional income streams



Be proactive, talk to other management rights operators, join ARAMA and swap tips and ideas with your fellow operators

Keep communications open with your unit owners – maybe a monthly 'newsy' email to shut out outside agents from poaching your letting pool

Be seen around the complex or building – get out of the office and put on a cheery face to your tenants and unit owners

Grow your business as best you can – talk to your tenants and guests about ways to improve your support to them – keep abreast of technology

When you are thinking about listing your business, talk to your accountant and ask his assistance to prepare sales figures and advice on the general presentation of your financial records – remember the buyer will almost certainly cover these in his due diligence investigations

Be aware that your sales figures

reflect net profitability of your business over the most recent twelve months – if economic conditions (or the size of your letting pool) are improving then consider delaying listing so as to increase net profitability (or vice versa)

Consider the likelihood of a capital gain on sale of your business and talk through this with your accountant – there may be ways to (legally) reduce the tax you will be required to pay

Your lawyer will need to be in on your preparations as well in respect of alterations to deeds and the like

Prepare your office as if it was being turned over tomorrow to the new owner – neat, tidy and everything up to date

You have, no doubt, put much blood, sweat and tears into your business over the years but remember it is still just a business – the sale price rarely makes allowance for sentimental attachment

Engage a reputable broker who

is conversant with your property and is willing to go the extra yard to get you a sale

Determine early on what realistic price you would be happy to sell your management rights business for, don't tell anyone else, and stick to it – remember you only need the one buyer, not necessarily the first buyer.

Selling any management rights business is a highly emotional and stressful experience. With the right preparations and attitude, you will succeed in making it as smooth and successful as conditions permit - all it takes is forward planning, a positive mindset and organisation on your part.

Good luck. 

By David Snow - is the management rights expert at The MBA Partnership P/L, one of the Gold Coast's leading providers of taxation, accounting and advisory services to the management rights industry. David has clients from Port Douglas to Tweed Heads.


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