

# The guide to buying a management rights business



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## *A bit about us*

We are a refreshing experience to most traditional law firms. As examples of how we operate:

- **We are accessible** - We have direct lines and we don't hide behind secretaries and receptionists and filter phone calls.
- **We return phone calls and emails** - Simple. Yes we know. But it is surprising how many lawyers don't return phone calls. It frustrates us when we have them on the other side of a matter, and we aren't even paying them.
- **Our office is open plan** - Not even the directors have offices. We have cut the traditional law firm overhead substantially, meaning cost savings that we can pass on to you.
- **We are very much a 'plain English' firm** - You won't get verbose advices from us including a lot of legal words that prove we have a law degree. We communicate very much on a layperson's level. Having acted for hundreds of clients new to the industry over the years we know what you need to know and present that in an easy to understand manner.
- **Lawyers find it very easy to recite the law** - What many lawyers cannot do is then apply that to your individual circumstances. We do that. If the law says you can do something, but we think you should not (for whatever reason) we will tell you. There is no point being legally correct but commercially wrong.

We are excellent value for money, and the proof of that is how many repeat clients we have. At any given point in time we would have somewhere between 30 and 50+ individual management rights transactions on foot. Some of these are new clients who asked around other firms, and the rest are repeat clients who trust us to do the right thing by them – which we do.

Just have a look at our website for the material we publish to both the management rights and body corporate industries.

Try us - you will be surprised at how different we are to the usual law firm experience.



## *What are management rights?*

A traditional management rights business has three basic elements:

- The ownership of real estate in a community titles scheme (**CTS**) (which usually includes an office or the right to use an office).
- A contract for caretaking of common property with a body corporate (i.e. gardens, swimming pools, pathways etc).
- An authorisation to let lots for owners in the scheme as their letting agent together with a number of letting appointments from those owners who choose to let through you.

There are a myriad of variations of the above. Some management rights do not include real estate and some are caretaking or letting only. Some have smaller or larger components of each element, but a standard management rights business is that above.

People choose to invest in management rights for any number of reasons. These include investment return, lifestyle choice and the alignment of their home and business. The returns from management rights businesses are very identifiable and recurring, which gives many buyers who are new to the industry peace of mind that cannot be found in many other business environments.

The operation of a management rights business can be applied to all styles of property developments including the traditional unit, townhouse, villa or resort style developments to more recent innovations such as corporate letting, student accommodation and retirement villages.

The purchase of a management rights business includes the right to obtain a resident letting agent licence (**RLA**). The licence permits the collection of rent and the management of properties within the community titles scheme in which you have an office and is relatively easy to obtain. The necessary education requirements can be completed through correspondence or attendance at a course run by an accredited training provider.

Management rights remain regarded as an incredibly safe investment proposition, but they remain a very 'people focused' business. If you get on well with people, the management rights industry may well suit you.

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*"I have interests in multiple management rights businesses. I have dealt with the team at Hynes for more than a decade and I would not use anyone else for management rights. They are quick to respond to any of my issues and cost efficient when they do. Above all, they know what they are doing. When I ask them a question (no matter how complex) I know I am going to get the right legal answer – and also the right commercial answer taking into account their understanding of the issue and the management rights industry. They have become an important part of any decision I make."*

**Colin Burton, Director, Dreamtime Resort Group**

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## *What is meant by caretaking?*

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A major element of any management rights business is the requirement to care for and maintain the common property.

The agreement with the body corporate will specify the actual caretaking duties required. Some agreements are very general and others show the requirements in great detail, to the extent of specifying daily, weekly, monthly and 'as required' duties.

One of the most important aspects of the caretaking component of a management rights business is whether the duties are personal or supervisory in nature. Personal agreements are ones that require you to perform the work personally or through contractors/employees paid by you. Supervisory agreements are ones where the duties are performed by contractors or employees who are paid by the body corporate, but who are supervised by you.

Quite often there can be a mix of personal and supervisory duties in a caretaking agreement.

It is always very important to know what is expected of you and to understand the true nature and extent of your duties. Most disputes that arise between bodies corporate and resident managers relate to issues about the performance of the caretaking duties, and most of these come about from differing expectations about the role of each party.

Understanding what you are required to do is of the utmost importance. The body corporate will pay you a fixed remuneration in exchange for your caretaking services, which is usually paid monthly in arrears. As your relationship with the body corporate is that of an independent contractor (and not as an employee), you will usually need to add GST to that salary. This means you then have to deal with your own tax and superannuation needs out of that remuneration.

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*"We own a management rights business consisting of 7 schemes in North Queensland. We could not be happier with the advice and support Hynes Legal have given us in the 6 years we have owned our business."*

**Kevin & Melissa Speer, Managers, On The Beach, Cairns**

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## *What is meant by letting?*

A typical management rights arrangement includes an agreement with the body corporate that authorises you to conduct a letting business within your community titles scheme. You cannot obtain a resident letting agents licence without this agreement. If you have a full real estate agents licence, this agreement is not quite as important for licencing purposes, but it still remains an important part of the business from a security and sale perspective.

The letting agreement with the body corporate usually requires you to promote the letting of units within the community titles scheme, supervise the standard of tenants for those lots let by you and potentially maintain an office and reception area. Sometimes there are set hours for the reception to be opened.

One of the longest standing legal principles in Australian law is that property owners are generally free to use their property as they see fit. This means that owners are not required to let their unit. They may choose to live in the unit or leave it untenanted (known as a lockup). They are also free to use letting services of outside letting agents. Despite that freedom of choice, few owners choose to use an off-site letting service. Most prefer to deal with a resident manager because there is a common interest in the maintenance of the complex as a whole.

Living onsite gives you significant competitive advantages over outside agents. Matters can be attended to on an urgent basis if required. Minor repairs and maintenance to units can be performed without the requirement to call out a tradesperson. There are many other reasons why onsite management works, which is why the management rights system that has been so long established in Queensland is being replicated in other Australian states.

Payment for the letting services comes from each owner who uses those services. You must enter into a separate contract known as a letting appointment with each owner who wants to let their unit through you, which details the basis on which you will act for that owner. There is a standard statutory form for this (known as a "PAMDA20A" or a "Form 6"), which should have some additional conditions added to it to cover matters the statutory form does not.

You may earn additional income from tenants or guests by providing additional services. Generally, the scope for additional income streams is greater in holiday or short term buildings. Additional services may include things like cleaning, linen, repairs and maintenance, equipment hire and sales of tours and theme park tickets.

## Buying off the plan

A threshold question is whether to buy an existing business or one 'off the plan.' Buying an existing business gives you certainty. You can touch and feel it, and run the ruler over it to know exactly what is good and bad about it. A documented history means it is very hard to hide things. Buying off the plan means you are buying the management rights business from a developer as part of the development itself. This means there is less visibility on what it will look like when it is created.

### What "off the plan" means

Buying off the plan needs more thorough due diligence from a buyer's perspective but that is usually compensated for in a lower purchase price for the business. Buying off the plan means the business is not as certain as buying an existing one - which of course means some increased commercial risk for buyers.

We have acted for clients in negotiating off the plan purchases before any soil has been turned on a prospective development through to purchasing just before registration.

Buying off the plan is a more difficult process than buying an existing management rights business as the contracts have to define, with great detail, what you are actually buying.

There is no standard form for them.

The starting point is satisfying yourself that the developer will deliver what has been promised. You can research other developments the developer has been involved with and can discuss what the developer is like with the managers of other properties the developer has constructed. A developer's character is very important as some are in it for the short term and others for the long term.

You are sometimes able to negotiate additions to the manager's unit and management rights agreements above what was originally contemplated. A review of the management rights agreements is urgent as developers who have sold units before selling the management rights may be reluctant to change the management rights agreements for fear of losing sales. This is where you need a lawyer who has a great deal of experience in negotiating changes, so that the amendments can be agreed upon, and presented to prospective buyers before too many lots are sold.



As the purchase price of a management rights business is based on the proposed net income, knowing how many units will be in your letting pool is critical. This will usually involve the documentation of a 'claw back' arrangement, where the contract will provide for payment per lot in the letting pool. There are many different mechanisms to ensure that you are protected, and it is important that you understand and explore these with an experienced lawyer. Some developers refuse to deal with claw back arrangements, but this depends on the state of the market. Supply and demand dictates industry practices.

The investment and marketing channels that the developer is using to sell the lots is also important. Are they aiming at owner occupiers or investors? Are they choosing overseas or local buyers? All of these are issues that will point heavily towards the final make up of lot owners and the prospective letting pool.

You need to be cautious with any marketing agents who oversell the income potential of the units and give investors false expectations of high returns. You will be the first person the owners will take to task if those expectations fail to materialise. Research the sales process and find out exactly what buyers of units expect. Review the sales material and decide whether the rental expectations are realistic or not. After all, the income potential of the units is also where you will derive the vast majority of your letting income through a management fee based on a percentage of the rental received by owners.

Buying off the plan is usually not something for the inexperienced. You have to set a business up from scratch, and will also have to deal with a certain level of building defects and owner confusion after settlement. Defects are simply one of the headaches that come with a new building.

Taking into consideration the above factors and subject to where the market is, a positive in buying a business off the plan is that it usually comes at a discount as compared to what that same business would be worth if it were an existing business.

On top of that, if the purchase of the business is structured correctly, you will not pay stamp duty on the business purchase, which can be a saving of 5% or more of what you would otherwise spend buying an existing business.

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*"There is only one firm I use to advise me on management rights and that is Hynes Legal. Other lawyers can do the cottage conveyancing for my developments, but Hynes are the ones who act for me on the negotiation and sale of my management rights businesses off the plan. They know off the plan issues inside and out."*

**Steve Anderson, Managing Director, Hayman Homes**



# *The different styles of management rights business*

## **Short term letting**

Short term letting takes the form of both holiday and corporate letting. Holiday let buildings are part of the tourism industry, which is generally recognised as one of Australia's largest business sectors. Corporate letting (especially in CBD locations) has also become very well established.

Operating management rights to short term let apartments is very similar to operating a resort or a hotel. The building must be promoted to attract tourists and business people for short stays from a weekend to longer periods. A higher level of service is required but the returns to both operators and investors should be correspondingly higher.

The advantages of short term letting include a greater rental return as people expect to pay more for short term rentals than they would for long term residential rentals. Another advantage is the additional income streams from service charges including; cleaning and linen charges, commission from ticket sales to popular tourist destinations, hire of cots and other similar services.

These types of management rights businesses are best suited to people who understand the corporate and tourism industries and are prepared to work at promoting their property. Location is important, as are the facilities that the building has (i.e. pool, garden, gym, sauna etc).

Marketing is also a very important component of the operation of any short term let building and being technology savvy is critical. Short term letting is not a holiday for the manager and marketing and management skills and the ability to deal with people are essential. Understanding cash flow is also very important because there are peak and off peak periods.

## **Permanent letting**

Permanent, or residential letting, involves finding good tenants, collecting rent, maintaining the lots and usually has a large caretaking focus.

In a permanent complex, a number of unit owners will probably live in their properties and tenants will stay for six months or more. This creates a very reliable stream of income. Permanent complexes require far less marketing than short term letting buildings and the front office duties are usually minimal.

Permanent letting has a lower rate of return per unit under management compared with holiday letting but the need for marketing skills is lower, as is the time spent actually managing tenants.

The manager must ensure the units are occupied as vacancies are not good for anyone. This keeps owners happy and gives outside agents less opportunity to compete.

There are usually going to be some owner occupiers in any permanent rental complex. It is critical to develop good working relationships with your owners and tenants. Forging strong relationships with the key owner occupiers (who will usually be on the committee) is essential. Presentation of gardens and grounds is usually very important because owner occupiers tend to take more pride in their surrounds.

## **Student accommodation**

Management rights can exist in student buildings. These can be structured as stand-alone lots but they usually come with a few bedrooms and a common area per lot, which a number of students share. Accommodation is referenced to terms and semesters and these styles of management rights business have a combination of short term and long term management rights issues.

The biggest commercial issue is managing the students. This usually needs a more 'school-masterly' approach – so if you are going into one of these businesses you need to be ready to read the riot act to students as required.

There are also somewhat different rules to managing tenancies because of the shared accommodation nature of the lots.

## **Franchising**

This is a business system that is very popular in many industries, and is sometimes active in the management rights industry. While you will still purchase the management rights business yourself, the business you have purchased will be branded with the franchise you are operating under.

As with all franchises, there is a requirement for a formal franchise agreement to be entered into. One of the main benefits of the franchise system is that the marketing of your management rights business is greatly supported by your franchisor. Naturally, this must be paid for, and there are different ways of doing so. Franchise fees can be based on gross turnover, flat rates, rates per booking and the like.

Franchises are generally only applied to short term letting operations, such as corporate or holiday letting.

## Other common questions

### Licencing

There are two different types of licence you can choose from to operate a letting business. You must have one or the other. You do not need a licence for caretaking purposes.

A resident letting agents licence (**RLA**) is a licence that you can obtain if you have body corporate approval to act as letting agent in a building. This is part of what you purchase with a management rights business as the letting agreement. You must have completed the required education modules which consist of six subjects such as letting, trust accounts and so on. A condition attaching to a resident letting agents licence is that you have an office onsite. Another condition is that you can only let lots in the building in which you have body corporate approval (i.e. a letting agreement with a body corporate). You cannot let properties outside your scheme or sell any properties under an RLA.

A full real estate agents licence takes a bit more work – primarily the completion of another 15 or so Modules – but once you have it you can act as a real estate agent and sell or manage properties anywhere in Queensland. You can still operate your management rights business under this licence, however, it might be a bit too much work for some to get through at the same time they are purchasing. We always recommend clients consider this course, even if they don't get a licence. After all, you have invested a lot of money in your business, and educating yourself about it is a smart thing to do and the course will help with that.

No matter which way you opt to go there are several choices of providers to complete your Modules through. Private providers along with TAFE and the REIQ can help. You can do the course via mail or attend classes for a few days with other people doing the same thing. Classwork is usually the best way to learn as you also get to chat to other people who may be on their own management rights journey from whom you can pick up tips.

### Partnerships

Partnerships are long established legal vehicles. Many law firms operate as a partnership as do many other professional service organisations.

Investing in the management rights industry through a partnership is also now relatively common. Finance brokers and many management rights brokers have registers of potential working and silent partners who can pool their available funds together to buy a bigger management rights business.

Partnerships are not limited to just two parties. There can be any number of partners all with different interests in the business. We have been engaged to act for partnerships of up to 15 different entities in one transaction.

Partnerships generally work because all partners have invested in the business. Like all partnerships open communication and transparency around expectations and financial matters are very important.

It is absolutely critical to have a formal partnership agreement in place. This is purely to cover the 'what if' scenarios. It also helps all partners understand their role in the business.

Failing to manage expectations from the start of any partnership is one of the most fundamental mistakes people make when they do not get the right advice. A partnership agreement on its own is not enough. You need to understand who is going to do what.

We have negotiated dozens of management rights partnership agreements and know what you need to know when considering purchasing a management rights business in a partnership arrangement. Our firm has also been through a number of partnership issues, some of which were resolved amicably, and some of which were difficult. That personal experience means we understand the good and bad points about partnerships.

### Management rights in other Australian states

The concept of management rights was established in Queensland. There are now many management rights businesses in New South Wales, and they are emerging in other states and territories like Victoria and the Northern Territory.

The New South Wales industry is based on the Queensland model. The industry in New South Wales is still developing and the statutory framework is not as advanced as Queensland. In New South Wales, a residential unit manager must obtain an onsite residential property manager licence rather than a resident letting agent's licence. Licence prerequisites are similar to Queensland requirements.

There is not the same statutory protection for owners of management rights businesses available in New South Wales as there is in Queensland. This is not necessarily something to be concerned about, but it makes it incredibly important to get the right legal advice to make sure that all legal issues are covered.

We have acted in numerous New South Wales management rights transactions over the years and are well versed in the tricks and traps of the industry.

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*'We have used Hynes for our NSW management rights matters. Due to circumstances beyond our control we unfortunately found ourselves in a very difficult situation with our Owners Corporation and Executive Committee. Hynes have been instrumental in resolving the dispute and they have been great to (and for) us in what has been an incredibly stressful time. We cannot recommend them highly enough.'*

**Jeremy and Julia White,  
The Oasis Apartments Byron Bay**



## Getting a little more specific

Investing in a management rights business involves the same considerations as with any other investment decision. You need to be comfortable with the value of the business, taking into account the factors that are driving the decision to invest in management rights. As with most investments, this is usually confirmed by looking at comparable properties.

Management rights businesses are generally considered secure investments. There are very few businesses based largely on goodwill that banks continue to accept as security, as is the case with management rights. Listed and unlisted public companies have also traded in the larger management rights properties.

Management rights businesses escaped the global financial crisis of the late 2000's relatively unscathed. There are very few industries that can say this.

## Industry experts

When investigating a management rights purchase, you will no doubt repeatedly hear that you should (or must) use an industry expert. As you would expect us to, we cannot recommend this strongly enough. Some people disregard this and use their usual lawyer, accountant or their local bank.

More often than not, these are the clients that we end up assisting after things have taken a turn for the worse. Management rights is a very specialised area.

Using someone who does not know what they are doing to assist you will be an experience fraught with frustration (through your advisor not knowing what is going on and not being able to assist you) and financial danger, which is usually the result of bad advice.

Many people call themselves experts. It is easy to advertise that. If they do, don't be afraid to ask for testimonials from other management rights clients. Ask them how many management rights transactions they are currently working on, or how many management rights clients they have advised over the last few months. Investigate how committed they are to the management rights industry. Ask the other industry professionals you are working with how often they have dealt with your advisors.

We see the consequences that come from not using management rights experts. They can be significant. Do not be lured into using someone who simply does not know what they are doing. As evidence of our expertise in the management rights industry, we are panel lawyers to ARAMA, the peak management rights industry body. Many so called "legal experts" are not.

## Knowing what you can spend

The starting point for any potential management rights buyer is to determine a comfortable purchase price in terms of what you can, and more importantly, want to borrow. This can be determined by speaking to an industry finance professional (which may be a finance broker or a bank). You will need to consider the value of your family home, superannuation, investments, savings and other assets (such as shares).

Depending on your financial position, you may need to sell some of these. From a finance perspective, security (as in the value of the assets you own) is one thing, serviceability (as in the ability to pay the required interest) is another thing entirely. While a bank may be satisfied that you have sufficient security, it may have concerns about your ability to service the loan. If you use an experienced industry financier and they think that things are too tight, you will be told that very early on in your investigation. Inexperienced financiers won't be able to tell you this, meaning you might progress to the later stages in the purchase process before you are not told it is not viable. This means you will have wasted money on the process to date.

Banks remain supportive of lending to the management rights industry and will usually lend at least 60% of the total cost of the management rights acquisition secured against the management rights and the manager's unit. As an example, if you were purchasing a business and unit for a total cost of \$1 million, and acquisition costs were \$60,000 (6% of the purchase price), the bank may lend you \$636,000 (60% of the all up acquisition cost) leaving you to provide \$424,000.

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*"Our family has owned multiple management rights businesses both alone and in partnerships. We started in holiday letting building on the Gold Coast, then moved into to a corporate let complex in Sydney, and then a long term letting complex in partnership on the Gold Coast. We are currently involved in a partnership in a very large corporate letting building in Brisbane CBD. We have used Hynes Legal exclusively throughout the years and recommend them to anyone investing in any management rights business. Their accessibility and advice is second to none."*

**Pam Ryall, M on Mary**



For the right property and operator, banks will usually offer higher lending ratios. Depending on the business cash flows and other criteria, there may also be interest only and fixed rate options available.

Each bank has different policies, which is where working with a specialist finance broker to advise you on what is best for you may work.

### Finding the management rights business that suits you

You can search for management rights in your price range by reading specialist management rights brokers advertisements in newspapers and on the internet. Twitter and Facebook are now also used by some brokers to advertise management rights businesses for sale.

Advertisements usually describe the property, the return on the investment, the value of the manager's unit and the price of the management rights.

You may wish to locate a broker that you can work with to assist you in your search. Some buyers register their interest with a few brokers, while others stay with the one. It all depends on how you want to operate.

As with all investments, sometimes people buy the first business they inspect, whereas others take several months, if not years, to find the right business. It all depends on what you are looking for.

In addition to the purchase price you should add an allowance for fees and expenses of up to 6% of the purchase price. This includes stamp duty, government licence application fees, accountant's costs, insurance, bank and legal fees.

You will need to take into account the advantages and disadvantages of the different types of management rights available. Usually, a good management rights broker will be able to provide you with guidance as to what style of management rights business they think you should be buying.

### Business structuring

One of the most important elements of a management rights purchase is the correct structuring of your purchasing entities. The days where you could buy everything in your personal names without any risk are gone.

Thought needs to be given as to who will own the management rights unit and the management rights business. Asset protection is one of the key areas from a legal perspective, and depending on your personal circumstances, a range of entities can be used to better serve your interests, from a company to a discretionary / family trust or unit trust.

Likewise, structuring is very important from a tax perspective. Buying a business in some form of corporate or trust entity as opposed to your personal names can have significant tax advantages.

Structuring is best worked through with both your lawyer and accountant to make sure that your personal circumstances are correctly taken into account. Using an incorrect entity to purchase can have significant tax and asset protection consequences. Unwinding an incorrect structure will almost certainly have stamp duty and capital gains tax implications.

If you are considering investing in a management rights business we recommend that you consider your prospective purchasing entities before you even find the complex that suits you. Doing this means that when you do find the right management rights business, you are ready to sign contracts straight away as you don't have to wait for advice.

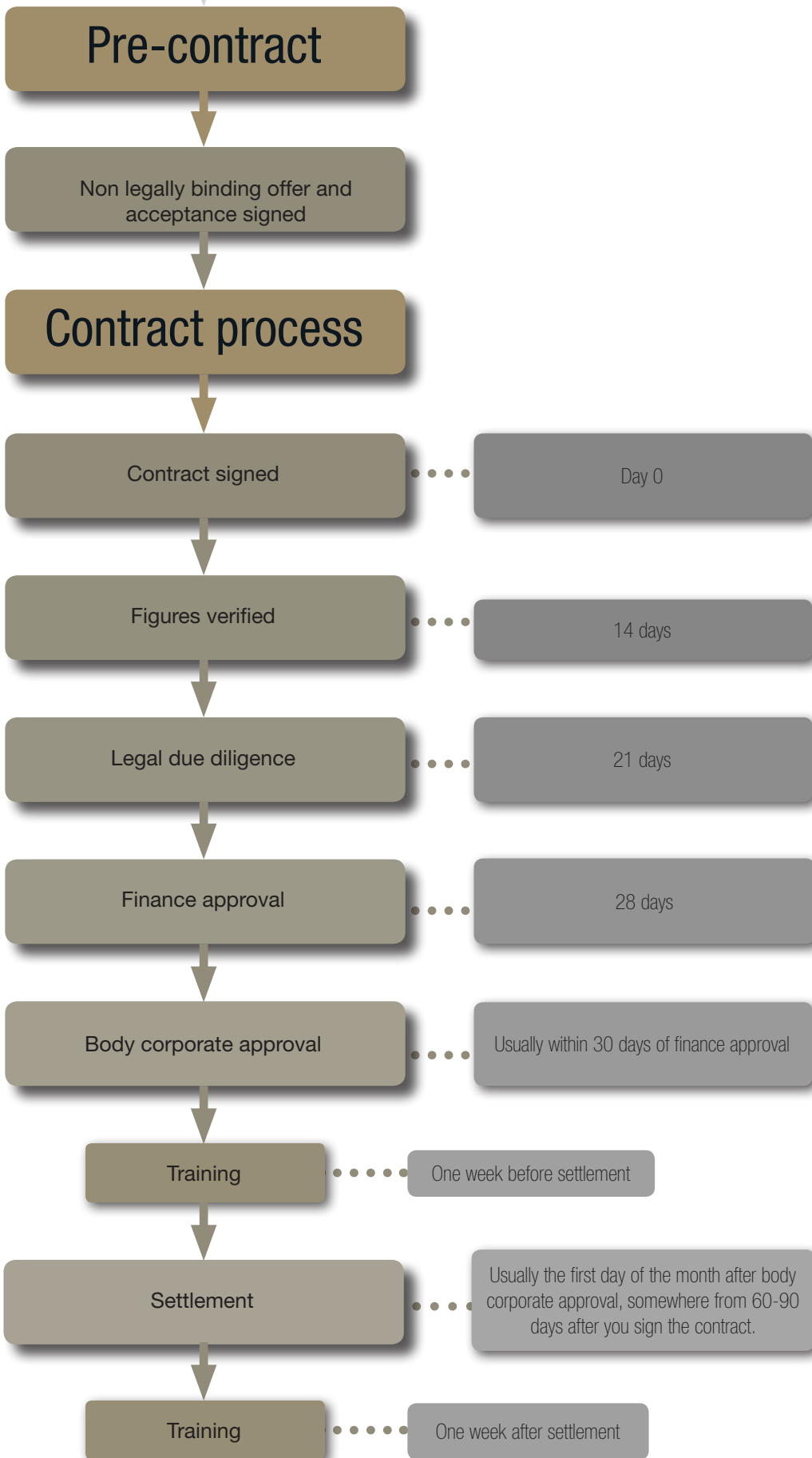
Even if you find that the management rights industry is not for you, the entities that have been created can still be used in your next business venture. Other than the relatively minimal set up costs, there is simply nothing to lose by making sure you have got it right to begin with.

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*"I have used Hynes Legal for all of my management rights matters. I have also referred many of my friends to them as they do such a good job. I recommend them to anyone looking at buying or selling management rights."*

**Kevin Gong, Wishart Views Villas**

# The standard management rights purchase process



## Asking the right questions

Ask the broker about the net profit of the business. Management rights sell at a multiple of net profit. If the annual net profit is \$100,000, the management rights may be valued at anywhere around five times that amount, for example \$450,000 to \$550,000, plus the value of the manager's unit and caretaking equipment. Of course, prices can be higher or lower than that example.

Net profit is calculated by deducting normal management rights operating expenses from the gross income of the business. Normal operating expenses do not include owner's wages, bank interest or income tax. Operating expenses do include staff wages for work above what a two person management team could perform. Income must not include illegal payments (kickbacks or secret commissions) from suppliers engaged by the manager to work for the owners. It will not include any cash paid under the table.

Find out how many owners are in the letting pool - the name given to the owners using the manager as their letting agent. The term 'letting pool' implies income is pooled and paid out equally but this is not generally the case. Management rights generally work on individual accounts for owners. Each owner receives the actual income for the unit less actual expenses for that unit.

Ask about who does not belong to the letting pool. They may be owner occupiers or absentee owners who choose not to let their property. Some may use an outside letting agent. The answers will reveal a number of facts about the business. A large number of owners using outside letting agents may imply that they are unhappy with the current manager. A new manager may be able to encourage these owners to come back to the letting pool for an easy capital gain.

Understand the remaining time left on the management rights agreements as they have a fixed end date. This will likely be anywhere from 5 to 25 years. It is also important to note that a body corporate is not required to renew management rights agreements. The manager must negotiate renewals with the body corporate as they fall due, but that being said, it is very rare for agreements not to be renewed.

Review the remuneration paid to the manager by the body corporate. The remuneration will usually increase each year (usually by reference to the CPI figures and sometimes by a fixed percentage). Find out if GST is included and if the remuneration is ever adjusted to market. Review exactly what you must do to earn that remuneration (i.e. the caretaking duties). This is especially important.

It is important to establish whether the manager's office is included in the title to the unit or is part of the common property. Where the office is part of the common property, rights of use must be established. The manager should have exclusive use of the office under a by-law or an occupation authority.

Owners of units in established properties are likely to be more conditioned about the value and return of their property. Owners of units in new properties may still have unrealistically high expectations. The age of the building is relevant to this and whether the developer may have offered leasebacks or rent guarantees to any owners.

Problems occurring in new buildings will usually have been resolved but older buildings will usually begin to need ongoing renovations or repairs. You may find that it becomes part of your role to convince the body corporate to invest further funds in maintenance and repairs, whether through expending funds already in the sinking fund, or by striking a special levy. You may also need to convince unit owners to renovate or update their lots, which is an opportunity for additional income.

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*'When we are acting in any management rights or strata matter (whether in Queensland, but especially in New South Wales) we are happy to see Hynes Legal acting for the other party. They are professional, courteous and responsive. They look after their client's interests like we do and I know that both of our firms are happy to refer clients and matters where we might have a conflict of interest to the other. This is because we both know the clients we cannot act for will be looked after properly by the other firm.'*

**Col Myers, Partner, Small Myers Hughes Lawyers**



## *Who is who and what they do*

### **The management rights broker's role**

The management rights business will more than likely be purchased through a specialist management rights broker. Management rights brokers must hold a Queensland real estate agents licence.

Be wary of dealing with an agency that does not specialise in management rights. Good management rights brokers know the questions to ask sellers to make sure that the listing information is as accurate as possible. We have had instances in which the seller's sales figures are grossly over stated, which an expert management rights broker would have resolved before even listing the business for sale (even though that might not be their role).

Specialist management rights brokers know the industry, and have the networks and listings that allow you to investigate the industry properly. They can spend time with you to make sure that you are right for the industry. Because of their specialisation, they can introduce you to a number of management rights businesses so that you can compare and contrast.

### **The accountant's role**

An accountant with knowledge of the management rights industry is an important asset during the purchase process and with the ongoing operation of the business.

Your accountant will attend to the formal verification of net profit under the management rights purchase contract. Your accountant will review the seller's trust account records and compare those with books and records of the business. You will receive a written report that confirms whether or not your accountant can verify the net profit stated to be earned by the seller.

The ability to assign the seller's letting appointments will be an important part of this review. An experienced management rights accountant will deliver an accurate report and you will be advised of any income or expense streams that are out of the ordinary. You should be advised if the accountant does not believe that some of the income levels are sustainable.

Your accountant will also need to continue to be involved in the management rights business throughout your tenure as manager. They can also assist you in the set up of your new business entities, your choice of management software and completion of the audits required by law.

It is important to work with an accountant that your financier accepts as an industry expert. If not, it is more than likely that you will need to commission another verification report for borrowing purposes from an accountant acceptable to your financier.





## The financier's role

All major banks and most regional banks lend to management rights businesses. There is a large degree of competition for lending to management rights businesses. Each bank has somewhat different lending policies and rates. If you are not sure who is best for you, there are several experienced management rights finance brokers who can help you assess the options available to you.

Interest only options are available if your application is handled correctly and the bank policy permits. The following is a simple example to show you how the lending ratios can be calculated:

Components	Costs
Purchase price of the manager's unit	\$400,000
Purchase price of the management rights (netting \$140,000 at a multiplier of 5 times)	\$700,000
Estimated acquisition costs	\$66,000
Total	\$1,166,000

Virtually all banks will lend \$700,000, which is 60% of the total acquisition cost and you will need the other \$466,000 in cash or equity before settlement. Some banks have higher or lower lending ratios than others and loan covenants can also differ.

We regularly deal with specialist management rights finance brokers and financiers who know the business inside out. They can establish the loan parameters immediately. Dealing with industry specialists prevents rejection, last minute complications and unacceptable loan terms and conditions.

If a bank won't finance your purchase you want to know as soon as possible to save on costs. The right financial advisor will save you wasting time and money.



## The lawyer's role

We are involved for the entire transaction. We make sure that you are structured correctly to start with. We then advise you on the contract you are signing and liaise with your accountant and financier to make sure that the conditions relating to figures and finance are complied with, and that any issues arising from either stage are dealt with.

Most importantly we conduct a legal due diligence of the management rights business you are purchasing. We make sure that the agreements you are buying will be valid on settlement and that there are no legal issues that arise under them. We review the by-laws and minutes of meetings and we go through everything to ensure any problems or potential problems with the business are identified.

We make sure that your investment includes a legally sound business and a home and confirm this in a comprehensive written report to you. The laws relating to management rights are complicated and we make it simple for you to see any big issues.

If there are problems we will identify them and our experience will also allow us to solve them.

We arrange the transfer of management rights agreements with the body corporate and attend to the conveyancing of the manager's unit. We deal with any body corporate issues that may arise.

We make sure that what is meant to happen for you to purchase the management rights business does happen. We prompt you at different stages throughout your purchase with things you need to do that you might not otherwise know about.

Fees are always important. We offer fixed fee quotes which are agreed upon in writing before we commence any work. After settlement, all our clients receive regular updates from us as to the latest industry news.

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*Thanks to the team at Hynes Legal for their professional advice and expertise over the 8 years we have been in the Management Rights industry. It has been most reassuring to tap into their knowledge on various aspects and successfully embark on the purchasing and selling processes utilising sound advice.*

**Heather and Peter Jones**



## Some terms you need to know

**20A / PAMDA 20A / Form 6:** These are the common terms for a letting appointment, which is an appointment that a resident manager holds from an owner to let their lot for them. They are also called 'management appointments.' They are on a 20A form if signed before 1 December 2014 and on a Form 6 if signed after 1 December 2014.

**BCCM Act:** This is the *Body Corporate and Community Management Act 1997*. This legislation covers almost all community titles schemes in Queensland.

**By-laws:** These are body corporate rules relating to the use of common property. By-laws detail the responsibilities of the body corporate and apply to everyone entering the complex including owners, tenants and guests. These are contained in the CMS.

**Body corporate:** The body corporate is a separate legal entity - similar to a company, that is created to control common property. All owners are members of the body corporate. An elected group (like a board of directors) form the committee.

**Body corporate manager:** Although it may be confusing, what is known under the BCCM Act as a body corporate manager is the person who administers the financial and secretarial side of the body corporate. This person issues levy notices, chases arrears, records total minutes of meetings and undertakes other related duties.

**Commissioner's office:** This is the office that decides the vast bulk of body corporate disputes.

**Committee:** Effectively the board of directors of the body corporate, who are elected every year.

**Committee meeting:** These are meetings of the committee held at different times throughout the year to discuss body corporate issues. These can occur monthly, or not at all. It all depends on how active the committee is.

**Common property:** This is property shared by owners and tenants. This may include foyers, hallways, swimming pools, gardens, tennis courts, gymnasiums and entertainment areas. It is everything other than the lots in the scheme. Maintaining common property is the primary obligation under the caretaking component of the management rights business.

**Community management statement:** Commonly referred to as a 'CMS' this is the document that contains the by-laws, a description of the real property in the scheme as well as the lot entitlements for the lots in the scheme.

**Community title scheme:** What was a single property title, when owned by the developer, which has since been subdivided into separate titles or lots (units or townhouses) and common property.

**General meeting:** This is one of two types of meetings where all owners can vote on issues. The first type (held once a year) is the annual general meeting. This is where, amongst other things, the committee is elected. Any other general meeting held during the year is called an extraordinary general meeting (or EGM). Annual general meetings are held to address financial and other aspects of the body corporate as well as direct the committee. Extraordinary general meetings may be called at any time to address specific issues. Owners attend meetings in a similar context to company shareholders.

**Lots:** The pieces of property in a community titles scheme that belongs to the individual owners. This is what the letting authorisation component relates to.

**Manager / letting agent:** The owner of the management rights. Other terms include RAM (residential accommodation manager) or RUM (resident unit manager) or onsite managers. The BCCM Act uses the terms caretaking service contractor and/or letting agent.

**Modules:** There are more detailed rules for different community titles schemes under the BCCM Act. Standard, Accommodation, Commercial and Small Schemes modules cover various types of body corporate structures, but it is safe to say that management rights businesses deal almost exclusively with Standard and Accommodation modules. The big difference between the two for management rights purposes is that under the Standard Module a management rights agreement is limited to a term of 10 years while under the Accommodation Module, an agreement can run for up to 25 years.

**QCAT:** This stands for the Queensland Civil and Administrative Tribunal, which is responsible for determining complex caretaking disputes between resident managers and bodies corporate.

**Specialist adjudicator:** A person that determines caretaking disputes through the Commissioner's Office. Specialist adjudicators were quite common in the past, but nearly all caretaking disputes now go through the QCAT.

**PAMDA:** This is the acronym for the legislation that used to regulate real estate agents which was the *Property Agents and Motors Dealers Act*. From 1 December 2014 it is the PoA that regulates real estate agents.

**PoA:** The legislation that regulates all real estate agents in Queensland is the *Property Occupations Act 2014*.



## *Why you should choose Hynes Legal to act for you*

Management rights is a very specialised area of law. We have the largest team of specialist strata lawyers in Queensland, acting across both the management rights and body corporate industries. This means we live and breathe the issues that affect management rights and bodies corporate on a daily basis.

Our lawyers regularly present at both local meetings for management rights owners and body corporate managers up to state and national conferences on strata issues. Additionally, we present webinars over the internet on a range of topical issues to ensure you can stay informed regardless of your location and in the convenience of your home or office.

We are one of the few panel lawyers for ARAMA (the peak management rights body) and are also involved with SCA (Qld) who is the peak body for strata managers.

### **So what does that mean for you?**

1. The purchase of a management rights business usually involves the investment of your life savings, and at the very least will involve a significant amount of money. There is no doubt that you have worked hard to earn what you are about to invest and engaging us makes sure that your investment is protected.
2. Dealing with a body corporate can be a frustrating exercise as there can be up to seven committee members, a strata manager and their lawyer. We can assist you in understanding how to manage these stakeholders effectively and efficiently, working collaboratively with you at all times. As we act for many bodies corporate, we can assist you to understand their position and provide perspective that will help you get to where you want to be.
3. The depth of our practice means we are a one stop shop for management rights matters. There is nothing we cannot do for you meaning that we will not have to refer you away to another firm to help if something goes wrong.
4. We know what many inexperienced lawyers don't about the management rights and strata industries. That means we can deal with all issues in a management rights matter and sometimes even cut them off before they arise. This is particularly the case in purchase and sale transactions.
5. Fees are always very important and we offer fixed fees for all types of management rights matters. Engaging us is like engaging a high quality builder. We scope the project, define what needs to be completed, include everything that will need to be delivered, and then fix a price for that so you have certainty. On the occasions where we cannot fix a price our standard hourly rates are very competitive.

Our specialisation allows us to be incredibly efficient as our management rights practice is the single largest practice area of our firm. This means we have tailored management rights content for everything you need, from the questions (and suggested answers) at the body corporate interview to fact sheets that help you understand your choices if certain issues arise during a purchase.

We understand that the purchase of your management rights may be your first purchase of a business. We recognise that this process can be daunting and having acted for hundreds of first time purchasers of management rights businesses, we know what you will need to know and understand. We pride ourselves on making the purchase process as informative and stress free as possible for all of our clients.



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