

# MANAGEMENT RIGHTS

## Some of the Basics



**SMH**

SMALL MYERS HUGHES

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LAW ■ BUSINESS ■ RELATIONSHIPS

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## ABOUT COL MYERS

**Principal  
Accredited Specialist – Property Law**



Col specialises in Management Rights and is the Small Myers Hughes Lawyers principal in charge of the Strata and Management Rights for Queensland, NSW, Victoria and Western Australia.

A solicitor since 1981, Col has carved out and earned a reputation as someone who ‘delivers results’. He has amassed a wealth of knowledge over 30 years of serving and supporting Management Rights and has practiced exclusively as a Property Lawyer since his admission. Col holds Specialist Accreditation in Property Law from the Law Society of NSW.

Col handles all aspects of a Management Rights transaction and acts for a variety of clients establishing, purchasing and selling Management Rights and also advises bodies corporate on strata related issues and disputes. Col’s extensive expertise means he can proactively advise when and how to best handle management rights to work effectively for individual scenarios.

Col highly values the relationship with his clients and other key industry professionals. He has acted for numerous people buying and selling management rights and regularly assists developers in establishing Management Rights in complexes.

In addition, Col is the patron and legal advisor of the Australian Resident Accommodation Managers Association (ARAMA) and is a regular columnist on strata issues in publications such as Resort News.

## OUR FIRM

Small Myers Hughes Lawyers are Gold Coast Lawyers who provide specialist legal advice to clients in all states of Australia.

Michael Small, Col Myers and David Hughes, the founding principals of Small Myers Hughes Lawyers, have successful long term histories as lawyers on the Gold Coast. Together, they have practised for more than 40 years at partnership level.

Small Myers Hughes Lawyers provide specialist advice on a diversity of factors which can have an impact on business and family relationships. We focus on helping professionals and families who need to manage and protect their assets, thereby ensuring that legacies are left for future generations.

We do not profess to provide the whole range of legal services to our clients. We know what we are good at and we practice exclusively in these areas.

Our specialty areas of practice are:

- ▶ Management Rights
- ▶ Business Law
- ▶ Property & Commercial Law
- ▶ Family and Relationships Law
- ▶ Body Corporate Law
- ▶ Tax & Revenue Law
- ▶ Wills & Estates
- ▶ Commercial Litigation

Our clients include small to medium enterprises, many of whom started on the Gold Coast and have grown to become state wide, national and international businesses.

Our stated roles of **LAW • BUSINESS • RELATIONSHIPS** reflect our commitment to providing absolute legal expertise, practical business advice, a common sense approach to dispute resolution and the development of strong personal relationships with our clients.

## WHAT WE DO

### We take the time.

We pride ourselves on our exemplary client care and transparency in our business dealings with our clients. We will take the time to guide and support you through the entire process, from start to finish. Because of our personalised approach and attention to detail, we are highly regarded by our clients and our industry peers.

### We ensure you understand.

When we communicate with our clients, we do so in a language you are comfortable with and understand, removing as much legal jargon as possible. This ensures that you fully understand the considerations, issues and relevant processes being used to assist in achieving your desired outcomes.

We clearly advise our clients of our fees up front to ensure that there are 'no surprises' when it comes to paying. If for any reason there is a variation in our fees we will discuss this openly and immediately with you, and not leave it to the time of payment.

### We deliver expert solutions.

Our dedicated team of proactive lawyers specialise in assisting buyers, sellers, developers and those already in the industry, in all aspects of management rights. We assist clients throughout all states and territories of Australia.

Due to the multi-disciplinary structure of our firm we have the ability to offer our clients expert advice and solutions on a range of issues that may arise in our dealings with you, ensuring a consistent, thorough and stress-free experience.

### We achieve practical outcomes.

We have a breadth of experience and understanding relating to the vast range of issues which can present themselves. More importantly, we have insight into how the different parties involved may respond to an issue, thus managing this to our client's advantage.

## EXPERT SERVICES

Principal and Accredited Property Law Specialist, Col Myers, leads our team of fully equipped, connected and dedicated strata lawyers who have assisted hundreds of clients with their management rights matters.

We are constantly exposed to all aspects of the management rights industry which in turn ensures you are receiving the most practical advice and expert solutions.

### Our particular expertise covers:

- ▶ Acting in the sale and purchase of existing and off the plan management rights
- ▶ Comprehensive legal due diligence reports
- ▶ Variations
- ▶ Renewals
- ▶ Defamation
- ▶ Structuring advice
- ▶ Attending and addressing body corporate meetings
- ▶ Code of conduct advice
- ▶ Partnership agreements and structures
- ▶ Structuring and asset protection
- ▶ Exit Strategies
- ▶ Exercise of options and agreement “top ups”
- ▶ Licensing advice
- ▶ Advice and preparation of letting appointments and leasebacks
- ▶ Dispute Resolution
- ▶ Advising developers on the creation and sale of management rights for their development
- ▶ GST, stamp duty and tax

Two key differences between Small Myers Hughes and other firms working in the management rights area are:

1. our ability to provide GST and tax/structuring advice as part of our overall strategy for each client. This expertise is provided by principal David Hughes and his tax team; and
2. our ability to act for clients buying/selling/setting up management rights in all states of Australia.

## MANAGEMENT RIGHTS EXPLAINED

### A Brief History of the Management Rights Industry

The Industry started in the 1970s on the Gold Coast in complexes where there were few or no resident owners. This resulted in the Body Corporate of the complex appointing someone to live on site to manage or take care of the complex. This practice extended to allow the 'on site' Manager to let units for owners who wished to rent them out. Since then this industry has expanded to become an integral part of Australia's tourism development and has become a multi-billion dollar industry in Queensland alone.

When a developer builds units or townhouses of a reasonable size, it makes sense for the developer to provide for the long term caretaking of the common property (like the gardens and the pool) and for there to be an on site letting service for owners who might want to let their property. These arrangements are called Management Rights.

### How they are set up

Management Rights businesses predominantly include three basic elements:

1. the ownership of a lot or lots in a community titles scheme (which usually includes an office or the right to use an office)
2. the caretaking of common property on behalf of a body corporate (i.e. gardens, swimming pools, pathways, etc.)
3. the on site letting of units in the community titles scheme in which you reside

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

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

The purpose of a management rights business includes the right to obtain a resident letting agent's licence. The licence permits the collection of rent and the management of properties within the community titles scheme in which you reside 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.

### How Does the Manager Earn Income?

There are normally two parts to the 'On site' Manager's duties and two major parts to the Manager's income.

#### 1. Body Corporate Salary:

In all multi-unit complexes, there are areas such as; pathways, gardens, pools, tennis courts, etc. which make up what is called Common Property.

The Body Corporate pays the Manager a salary, usually monthly in arrears, to maintain the Common Property, see that the By-laws are adhered to, and report on any matters pertaining to the complex. If you wish, you may think of it as a caretaker's salary.

The Body Corporate also pays for all the day-to-day expenses of looking after the common property. Such things as mower fuel and repairs, pool chemicals and fertiliser are expenses for the Body Corporate, not the Manager. Often all the necessary equipment is owned by the Body Corporate, and provided for the use of the Manager.

The Body Corporate salary is usually indexed to the CPI, to allow for automatic annual increases.

#### 2. Letting Commission Income:

The Manager has the right to act as on site Letting Agent for investor owners wishing to rent their units to tenants. The manager is paid commission and management fees by the individual lot owners for securing good tenants, accounting for the rent, and ensuring that the rental property is kept in good condition.

Other sources of income for the Manager include repairs and maintenance for landlords, cleaning charges and monthly statement fees. In holiday complexes you can earn additional income from areas such as room cleans after each guest books out, linen hire, telephone and internet usage, sporting equipment hire and tour and hire car bookings.



## Do you need any Special Qualifications?

To legally operate the Letting business, you will need to obtain a Restricted Letting Agent's Licence or a full Real Estate Agent's Licence. This involves the study of subjects through registered training organisations. These subjects are generally undertaken in a classroom environment; however some RTOs offer courses "on line" or by correspondence.

## Why should you use Management Rights experts?

The purchase of management rights can be a complex process which requires a significant investment of your time and money. It is therefore vital that you engage relevant industry experts to guide you through the stages and ensure a smooth purchase process.

Their experience will assist in identifying any real or potential issues. If you're contemplating using your current team (solicitor, accountant or lender), then it is advisable to ascertain that they possess and demonstrate the appropriate expertise in this area.

## What your key advisors will do for you:

### Your solicitor

Your solicitor may provide advice on matters including:

- ▶ your borrowing structure
- ▶ the names in which to purchase assets
- ▶ setting up company and trust structures

However, their main task is to undertake a 'Due Diligence' as part of the purchase process. This includes reviewing:

- ▶ the contracts
- ▶ the Management Rights agreements and any extensions, assignments and variations
- ▶ the By-Laws and Community Management Statement
- ▶ the Body Corporate records

The Due Diligence report can be provided to both you and your lender. If any issues are identified during this process, your solicitor will discuss them with you and provide guidance on how to manage them.

The role of your solicitor doesn't end at settlement. Once you own a management rights business, you will probably need their assistance for things like:

- ▶ exercising an option
- ▶ seeking a variation in your agreements
- ▶ seeking an extension in the term of the agreement
- ▶ dealing with complaints or issues

### Your lender or finance broker

Not all banks have managers who specialise in purchasing management rights. So look for a finance broker or a bank who has built a reputation in this specialist area, and make sure they have a real understanding of the industry, current issues and values.

If you're new to Management Rights, you should look for a finance broker or lender who can put you in contact with other key industry advisors. They should also be able to give you an indication of how much you can borrow, provide you with a funding scenario for any options you're considering, and introduce you to other financial specialists you may need to help run your business.

You also need to think about whether the lender you use during the purchase process, will continue to work with you after settlement.

### Your accountant

Your accountant's main role is to conduct a specialist verification of the financial records of the business you intend to purchase. They may also help you set up any company and trust structures.



The verification process includes:

- ▶ a review of the income for the period detailed in the purchase contract
- ▶ an analysis of the income achieved by the business for different services and a comparison against industry benchmarks
- ▶ an analysis of occupancy trends
- ▶ a review of the letting appointments which are in place for the complex
- ▶ a review of the most recent Trust Account audit report

Your accountant will then give the Verification Report to both you and your lender. Again, the relationship with your accountant doesn't end at settlement. The Trust Account which you operate as part of your business needs to be regularly audited, with a report submitted to the Office of Fair Trading, on a yearly basis.

Your accountant will also prepare annual financial statements which will break down your income and expenses, according to the different services your business provides.

### Your sales agent

Sales agents are sometimes overlooked when we talk about industry specialists, but they often have years of valuable experience in this area. Many agents have even owned and operated a number of management rights businesses themselves.

The agent will be able to provide guidance in relation to the industry with knowledge of income, occupancy and value trends. They can also put you in contact with key service providers such as tradesmen, cleaners and linen suppliers.

### Choose your team carefully

Remember, your key advisors all need to work together to support you, both during and after settlement takes place – so choose carefully.

An effective team can make all the difference to the success of your Management Rights business.

**Small Myers Hughes Lawyers are here to work with and support you and your team.**



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**Col Myers**

0417 620 516

[cmyers@smh.net.au](mailto:cmyers@smh.net.au)

[www.smhmanagementrightslawyers.net.au](http://www.smhmanagementrightslawyers.net.au)

Level 2, 17 Welch Street, Southport Qld 4215

PO Box 1876, Southport Qld 4215

Phone: +61 7 5552 6666 | Fax: +61 7 5528 0955

[info@smh.net.au](mailto:info@smh.net.au)

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