



COMMITTEE GUIDE

Management Rights Assignments

Understanding Management Rights assignments.

This guide is for committees who have been asked to, or may soon have to, consider the question of consenting to the assignment of the management rights agreements for their scheme.

While it's not possible to answer every legal question, this guide will help committee members better understand what they have been asked to do.

Give yourself the best chance of a smooth transition by reading through this guide. Contact the team at Hynes Legal if we can be of assistance at any point throughout the assignment process.

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Contents & Quick Links

The management rights business	03
Sale of a management rights business	04
Typical management rights sale timeline	05
Key elements of an assignment	06
Frequently asked questions	07
<i>What happens at the interview?</i>	07
<i>Can a body corporate refuse to consent?</i>	07
<i>How long does a body corporate have to make a decision?</i>	07
<i>Can changes be made to management rights agreements as a condition of approval?</i>	07
<i>What will be signed?</i>	08
<i>Costs - who pays what?</i>	08
<i>Is there a transfer fee?</i>	08
<i>What does your body corporate manager do?</i>	08
Terms to know	09
Why choose Hynes Legal	11



01 The management rights business

Management rights is a distinct form of business that only exists in strata-titled buildings. They are usually a combination of two separate business components: caretaking and letting.

Generally, the person entitled to those rights will also reside in a lot in the scheme. For the purposes of this guide, that person will be the 'resident manager'.

Caretaking contract

The first component to a management rights (MR) agreement is a caretaking contract. This is a contract for service (not one of employment) in which the body corporate engages the resident manager to provide services as set out in that agreement for a finite term.

Letting authorisation

The second component is a letting authorisation. This is where the body corporate authorises a resident manager to provide letting services to owners who choose to appoint the resident manager as their letting agent. These letting services are not provided to the body corporate itself – only to individual lot owners who have chosen to engage the resident manager via an individual letting agent appointment.

Real estate

A management rights business is usually tied to an individual piece of real estate in a scheme. This is usually a residence but quite often will include an office component of some sort.

These arrangements are collectively known as 'management rights'. The description above would be considered a standard management rights arrangement, but there are multiple variations on the same themes.

Management rights is a relatively large industry, with arrangements common in smaller buildings, which may have around 20 lots, all the way through to the largest of complexes. They can apply to any style of complex, including permanent and holiday rentals, corporate lettings, student and seniors buildings.

Management rights businesses are usually sold on a multiple of net income earned, based on the work that a two-person management team should be able to perform. The multiple can range from next to nothing (for a very poor business) up to nearly six times or more (for an extraordinary business). The cost of the real estate is in addition to this.

Pricing of a management rights business is beyond the scope of this guide, but a management rights business can have quite substantial capital value. In smaller management rights businesses the resident manager effectively buys themselves a job; in the larger ones, a management rights business can be a large-scale business enterprise with large staffing needs.



02 Sale of a management rights business

Why the committee is involved

The body corporate is the entity that has engaged (as caretaker) and authorised (as letting agent) the resident manager.

As a party to the management rights agreements (even if the agreements themselves do not provide for it) the Body Corporate and Community Management Act 1997 (BCCM Act) requires that the body corporate must consent to the transfer of any interest of the resident manager in those agreements. This transfer is also known as an assignment.

This right allows the committee to meet the buyer and ensure that they are capable of performing the job of the resident manager. The committee is effectively a gatekeeper for the interests of the body corporate as a whole, so far as it relates to who the new resident manager will be.

Short of it having been previously made a restricted issue in a general meeting, almost all body corporate committees have the right to consent to the assignment without reference to owners in a general meeting. The committee can put it to a general meeting if they want, but almost all assignments are decided at committee level.

The management rights sale process

A management rights contract will usually take between 90 and 120 days to settle from when the seller and buyer agree on the terms of the sale and sign the sale contracts. A typical transaction timeline is outlined on the following page.

Over the first 45 to 60 days the buyer usually performs a due diligence on the business itself. This is generally a staged process where the buyer and their chosen advisors review the business income and the legal components of the deal. The last due diligence step is usually ensuring that finance can be obtained for the purchase to proceed.

Sometimes the committee will be aware that the management rights business is for sale and other times not. This will depend on the relationship each committee has with their resident manager and how actively a committee may monitor advertised listings of management rights businesses.

Once the contract is unconditional with respect to issues within the buyer's control, the lawyers for the seller will normally write to the body corporate manager informing it that the management rights business has been sold, and asking that the committee consent to the assignment of the management rights agreements.

That request will usually include a bundle of legal documents together with information and material about the buyer. It is when this request arrives that the body corporate should engage the right lawyer to guide them through the assignment process.

A common complaint is that the committee may have been kept in the dark about the management rights being for sale until after the contract was unconditional.

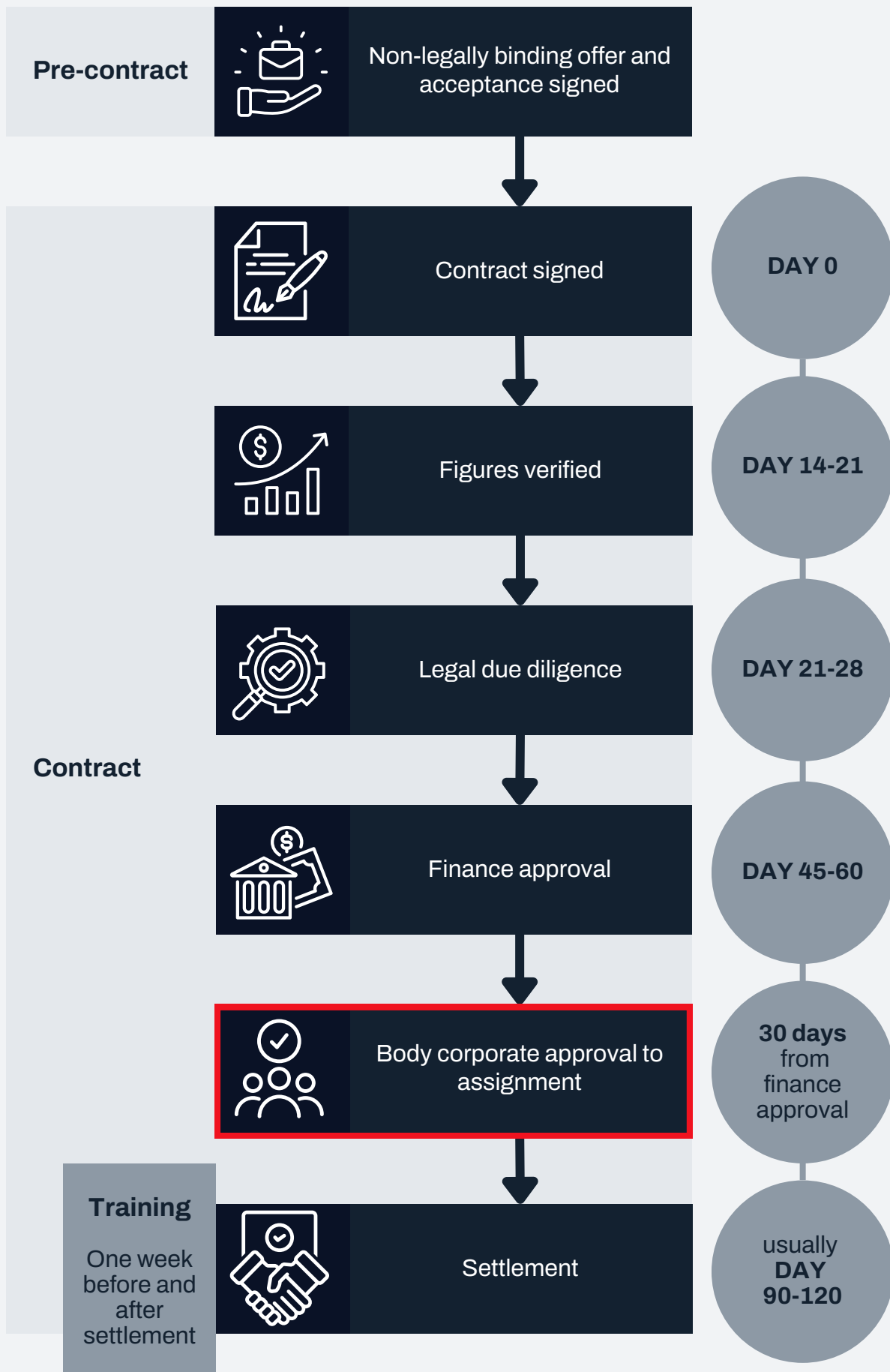
A resident manager may choose not to inform their committee about the sale until this stage to save them time and money. If the committee was to get involved and the sale did not meet due diligence standards or there were issues with finance, the body corporate would have incurred unnecessary costs in considering an assignment that never had prospects of proceeding.

When Hynes Legal are engaged at this stage we take control of the process for the body corporate.

“ I feel confident that my best interests are supported by Hynes. Hynes are so easy to work with and approachable at all times

Denise B, Body Corporate Client

03 Typical management rights sale timeline



04 Key elements of an assignment

THE LEGAL ELEMENT

An experienced management rights lawyer should review all the legal documents submitted for the purposes of the assignment, ensuring the body corporate's interests are protected.

The first issue is the motion to consent to the assignment. It needs to reflect the correct parameters and conditions (if any) imposed in relation to the assignment.

The other key legal document will be the deed of assignment itself. This is usually a deed to which the resident manager, proposed buyer, and body corporate are a party. This deed will confirm the actual assignment of the resident manager's interest in the management rights agreements, and also record the body corporate's consent to that assignment.

Quite often this deed will seek to confirm or reinforce the terms of the management rights agreements. The body corporate should seek legal advice on what it is being asked to sign.

If the management rights business is not Queensland based, there may also be a document called a deed of consent to security or financier protection deed. This deed is a tripartite document in which the body corporate, the buyer, and the buyer's financier agree how defaults under the management rights agreements will be handled. These documents are prohibited in Queensland as financiers have statutory protection rights under the BCCM Act.

Our advice will break down each individual warranty or statement the body corporate is being asked to give and what it means. If there are any unlawful requests made we will simply have them removed from the agreement. It is not uncommon for buyer's lawyers to ask for confirmation of aspects that may be beyond the statutory power of the committee to deliver.

Sometimes a buyer will seek comfort from a committee about other issues relating to the

agreement. To the extent that the request is lawful, we will advise the committee about what is being asked for and what it means. It will then be a discussion for the committee on whether they want to provide that comfort.

Depending on how the prospective buyer has structured the purchase there may also be lot owner, trustee or personal guarantee provisions to include in the deed of assignment.

THE COMMERCIAL ELEMENT

A body corporate is entitled to know that a buyer can do the job of the resident manager.

Under the BCCM Act, the committee is entitled to information and material that addresses each of the following concerning the buyer:

- character
- competence
- qualifications
- experience, and
- financial standing.

The committee is also entitled to know the proposed terms of the transfer and the training that will be provided. If the management rights agreements set it out, further information may also be able to be requested.

This is a component where the committee may want further advice, or it may be comfortable to run the assessment of the buyer on its own. Ultimately, these issues are not so much legal as commercial.

While we have provided advice to many committees on these issues, our role tends to fall back to being an advisor regarding discrete questions on the material submitted, such as: 'Is this enough?', 'Can we ask for more on this point?', and so on.

While the BCCM Act does not set out that a prospective buyer must be interviewed, it is common practice for the buyer to meet the committee to answer questions about their background, going over their material or just getting to know them.

05 Frequently asked questions

What happens at the interview?

It is really up to the committee. An interview can be as tightly structured or as informal as you want it to be.

As your lawyers, Hynes Legal can provide a tailored list of questions that might be asked of a prospective buyer. We recommend supplying the questions to the buyer before the interview so they can be prepared. It is also worth writing to the buyer beforehand with any specific issues the committee would like addressed.

While it is not a formal job interview, it should be treated as one by both the committee and the prospective buyer. Questions about age, marital status, sexual preference, race, religion, children and gender should all be avoided.

First impressions count. How you present in this interview will colour your relationship with the buyer (if it settles) and your existing resident manager (if it doesn't).

Can a body corporate refuse to consent?

The body corporate cannot unreasonably withhold consent to an assignment. In essence, it must consent to the transfer unless there are reasonable grounds to refuse it.

While we say that the meeting should be treated like a job interview, there is only one applicant – and the committee cannot unreasonably refuse to consent to an assignment to that applicant.

It is not common for management rights assignments to be refused, but it does happen. Before a body corporate refuses an assignment it should have strong legal grounds for doing so, which would encompass proper written legal advice and a complete and full assessment of all of the circumstances giving rise to the potential for refusal. It is beyond the scope of this guide to advise on those circumstances because they can be very nuanced. This is where you need the right legal advice at the time.

If consent to an assignment was found to be unreasonably refused, the body corporate would be exposed to a claim from the resident manager to the extent they suffer loss or damage in relation to that refusal. The loss can only be quantified after the management rights are next sold and the starting point would be the difference in the value between the two sale contracts.

A refusal to consent to an assignment is a very serious step and not one to be undertaken lightly.

How long does a body corporate have to make a decision?

At law, the body corporate has 30 days from the receipt of all information reasonably necessary to consider the assignment to make a decision.

What information is 'reasonably necessary' depends on what the management rights agreements provide together with the criteria as set out in the BCCM Act.

There are always shades of grey as to whether the information provided is all that is reasonably necessary. This is a question of fact and degree in each individual assignment and references back to the commercial elements of the assignment outlined previously.

Can changes be made to management rights agreements as a condition of approval?

In short: no. The request to consent to the assignment of management rights agreements is not an invitation to renegotiate the management rights agreements themselves.

If the parties to the assignment are seeking changes to the agreements then that potentially opens the opportunity for the body corporate to negotiate – but otherwise it really is a "yes" or "no" question: Can the prospective buyer do the job or not?

What will be signed?

A deed of assignment is needed for the parties at settlement. There will usually be three identical copies, and each party should be given one to keep after settlement. Once the terms are finalised and agreed to, the committee should sign this deed on behalf of the body corporate in accordance with a committee resolution to do so.

The committee must record a formal vote on the assignment, which will be in the terms of the motion your lawyer has advised on.

Common seals for bodies corporate were abolished in May 2024, so they are no longer needed.

Costs - who pays what?

Because the body corporate has been put to the expense of dealing with the assignment purely at the request of the resident manager, the resident manager is obliged under the BCCM Act to pay the body corporate's reasonable legal and administrative costs relating to the assignment.

This covers your lawyer and the administration cost of your body corporate manager.

A body corporate can only recover costs that are reasonable and only in relation to the assignment. For example, the body corporate may also want advice about the interpretation of certain clauses in the management rights agreements. These costs would not ordinarily be recoverable from the resident manager as they are not related to the assignment itself.

That might be different if the parties to the assignment were asking the body corporate to confirm a certain interpretation of the duties in the deed of assignment. Again, this is where an experienced legal advisor can help.



Hynes were very professional, took care of all the paperwork in a timely manner. Kept us informed at every stage. Would definitely recommend them.

Mary M, Body Corporate Client



Is there a transfer fee?

A transfer fee is payable to the body corporate as a condition of it consenting to an assignment within two years of the resident manager purchasing that management rights business. The fee is referenced purely to the value of the management rights business itself and not any associated real estate.

If the business is sold within the first year of the resident manager owning it, the fee is 3% of the value of the management rights business. The fee is 2% if it is sold in the second year. After that, no fee is payable provided that the resident manager's service is continuous.

If a transfer fee is payable, it includes GST. If the body corporate is registered for GST, 1/11th of it must be paid to the Australian Tax Office. The GST component cannot be passed on in addition to the 3% or 2% claimed. The transfer fee must be paid to the sinking fund.

Imposition of a transfer fee is compulsory unless the resident manager is transferring the management rights because of genuine hardship that was not reasonably foreseeable by it at the time they purchased the business. This is a question of fact in each individual agreement.

What does your body corporate manager do?

Your body corporate manager will be the initial point of contact for the matter. They will usually be instrumental in recording the transfer of the agreements in the body corporate's records and minuting the decisions of the committee in relation to the assignment. They will usually be the focal point of the transaction in a coordination context.

06 Terms 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	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 Community Management Statement (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) forms 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	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	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	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, 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	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 (AGM) where, amongst other things, the committee is elected. Any other general meeting held during the year is called an extraordinary general meeting (EGM). AGMs are held to address financial and other aspects of the body corporate as well as direct the committee. EGMs 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	More detailed rules exist 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	Queensland Civil and Administrative Tribunal, which is responsible for determining complex caretaking disputes between resident managers and bodies corporate.
PAMDA	The acronym for the legislation that once regulated real estate agents, the Property Agents and Motors Dealers Act. From 1 December 2014, the PoA regulates real estate agents.
PoA	The legislation that regulates all real estate agents in Queensland is the Property Occupations Act 2014.



In all cases the service has been impeccable, the advice was correct and any strategy to achieve my intended outcomes was well researched and executed.

Tim H, Long-time Body Corporate Chairperson

Why choose Hynes Legal

Management rights is a unique area of law.

Hynes Legal only practices in strata law – we live and breathe the issues that affect management rights and bodies corporate on a daily basis.

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

Our **dedicated team of lawyers** has advised hundreds of body corporates and their committees, resident managers and associated industry parties across an enormous range of strata issues.

Our **extensive knowledge** of the day-to-day operations of a body corporate, and the management rights and strata industries as a whole, ensures that our clients can rely on us to get our advice right first time, every time.

We understand the importance of fostering **long-term relationships** with our clients, and where possible, we will always strive to add value through our network of contacts and industry leadership.

Meet our management rights team

We are leading legal professionals, dedicated to supporting the strata community.



Robert Lalor
Director



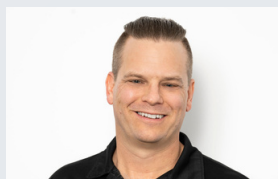
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We are leaders through the strata maze.

The team at Hynes Legal has been dedicated to strata law for decades and has supported thousands of clients from all walks of the strata-sphere to find their strata solutions.

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