



**Amity** LAW

# Guide for Buyers of **Management Rights**

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# Introduction

**Management rights** is the industry name given to the business of providing caretaking and *letting services* for apartment and townhouse complexes.

It is a product of the demographic shift to apartment living.

Like pretty much everyone in the industry, at Amity Law we believe there will be sustained growth in **management rights** Australia wide for the foreseeable future and we have developed our expertise to cater for this.

## Contents

This guide is intended to assist people buying *management rights*, particularly those new to the industry. It includes:

- a blurb about us;
- a short summary of the legal framework which governs communal living in apartment complexes;
- a summary of what comprises a *management rights* business and the types of *management rights* businesses being operated;
- a summary of *caretaking and letting agreements* which record the services *resident managers* provide and the reward for providing those services;
- the steps we suggest a buyer takes before signing contracts to buy management rights; and
- the steps a buyer needs to take after signing contracts to settle the purchase of a *management rights* business.

## Your queries

There is a lot more to know about *management rights* than what we have briefly covered in this guide.

Please feel free to contact us by phone or email at any time.

Our lawyers will always be available to respond to your queries on any aspect of the purchase, sale or operation of a *management rights* business.

Contact details for our directors are on the next page and contact details for all our lawyers are on our website – [www.amitylaw.com.au](http://www.amitylaw.com.au).

**If you are someone who is considering buying a management rights business or you are an existing owner reading this guide, we hope it assists and look forward to talking with you.**

# About Us

## Accommodation and hospitality specialists

Our sole focus is the Australian accommodation, tourism and hospitality industries. We specialise in:

- Management rights;
- Land lease communities (known as manufactured home parks in QLD);
- Motels and tourist parks; and
- Hospitality, liquor and gaming licensing.

Our lawyers have more than 30 years' experience helping clients buy, sell, finance, let, negotiate, dispute and protect their *management rights* and accommodation interests.

We know the industry, know the players and use this knowledge to get you results.

## Clients

Our clients in the *management rights* industry are *resident managers* and developers. We do not act for *body corporates* to avoid being conflicted when our *resident manager* clients need legal assistance.

## Key contacts

We operate a single point of contact service delivery model. Your primary points of contact at Amity Law would be Matt Allen and/or Adam Geldard.

Matt and Adam are both directors. Either Matt or Adam would be responsible for all your work and the day to day management of the people at Amity Law who would assist you.



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## Why Amity Law

Amity Law is not your typical law firm. We offer real benefits, including:

- **Distinctive competence** in our chosen areas of specialisation. A lot of firms claim to be specialists. We are.
- A **contemporary attitude** to our business (we give timely commercial and practical legal advice).
- A **commitment to developing enduring relationships**. We want to become your trusted advisor. We will work hard to understand your business and legal requirements.
- A **single point of contact** service delivery model.
- A focus on **delivering value** - we do legal work for fixed fees agreed upfront with you (there are no fee blow-out surprises with Amity Law).

**These things are ingrained into our firm culture and define the way we operate.**

## Our service guarantee

We guarantee you will receive the highest quality service throughout your matter.

We cannot guarantee outcomes, but we do guarantee your satisfaction with our services.

We charge fixed fees.

If at any time we do not perform to your satisfaction, or if you have any concerns or queries relating to our work or fees, we ask that you let us know.

We will then resolve the matter to your satisfaction, even if this means reducing our fees.

# Community living and jargon

## Community title / strata schemes

To cater for the demographic shift to apartment living, state governments have passed specific legislation which governs the maintenance and administration of apartment and townhouse complexes.

An apartment or townhouse complex comprises:

- the *lots* owned by individuals (pieces of land or cubic airspace in multi-level buildings); and
- the *common property* (the property in the complex all owners have the use of, e.g. the pool, tennis court, driveways, gardens, lifts, rooftops etc).

The legal name given to an apartment or townhouse complex in QLD is a *community title scheme*. In NSW it is called a *strata scheme*. Each *scheme* has registered by-laws. These are rules about use of the *common property* and living in the *scheme*. *Lot* owners and their occupiers must abide by the *by-laws*.

## Body corporate

When a developer develops an apartment or townhouse complex and subdivides the parcel of land on which the complex is built to create *lots* for sale, a separate legal entity is automatically created. This entity is known as the *body corporate* in QLD and the *owner's corporation* in NSW. The *lot* owners are the members of the *body corporate*.

The *body corporate* owns the *common property* and is responsible for maintaining it.

The *body corporate* appoints a committee to oversee the spending of levies paid by *lot* owners to maintain the *common property* and administer the *scheme*.

### TIP

**Tip:** Owners of *management rights* need to become familiar with the dynamics of a *body corporate* and its *committee* and the rules that govern them. We can assist.

## Common Property

As part of your business you will need to be familiar with the use of *common property*. You should know, it is available for use by all *lot* owners, it cannot be sold or leased without the unanimous consent of all *lot* owners and you will normally be engaged to maintain it (although perhaps not personally) as part of the *caretaking services* you provide. There is more to it, but those are the basics.

## By-laws

Typical *by-laws* relate to the use of the *common property*, pets, parking rights and maintenance of uniformity of *lots* in the *scheme*. The *by-laws* are contained in the registered *community management statement* and can't be changed other than by a vote of all *lot* owners at an annual general meeting of the *body corporate*.

### TIP

**Tip:** some lawyers specialise in strata scheme law but don't have expertise in *management rights*, or vice versa. We are specialists across both, ensuring all bases are covered for you.

## Jargon

Like all industries, there is whole lot of jargon in the *management rights* industry (we could fill up 20 pages).

Some of it comes from the state legislation and some of it is simply made up by the industry.

Understanding the jargon does help to demystify the industry, so we have included a short dictionary at the back of this guide listing some of the key terminology. All words shown in italics in this guide are defined in the dictionary—in case you wish to keep this for future reference.

### TIP

**Tip:** don't let people be-dazzle you with big words—it's usually just industry jargon.

# Management rights

## What you buy

When you buy a *management rights* business you acquire (in a nutshell) the right to provide:

- *caretaking services* for the *common property* in a *scheme* (e.g. the gardens, pool and recreation areas shared by all *lot* owners in the *scheme*); and
- *letting services* for the *lot* owners who wish to let their *lot* and who appoint the *resident manager* to do the letting on their behalf.

## Income

In return for providing the *caretaking and letting services* for a *scheme*, the *resident manager* receives:

- a fixed annual income for the *caretaking services*—paid by the *body corporate*; and
- rent commission (and other fees) for *letting services*—paid by individual *lot* owners who appoint the *resident manager* to let their *lot*.

## Place to live and work

Most people who buy the *management rights* for a *scheme* also buy a *lot* in the *scheme*.

*Lot* owners (in the main) prefer *resident managers* to live on-site. If the *resident manager's lot* does not include office space, the *body corporate* will usually grant the *resident manager* a right to use an office / reception / storage area located on the *common property*.

Combining a home and business is part of what makes *management rights* a unique investment.

## Relationships are really important

The law is one thing but maintaining good relationships with *lot* owners and *body corporate* management will make life easier for you and ultimately enhance the success of your *management rights* business. You need the confidence of *lot* owners to ensure *letting appointments* are maintained and the consent of the *body corporate* for the renewal of your *caretaking and letting agreements* and the assignment to a purchaser on the re-sale of your *management rights* business.

## Types of management rights

*Management rights* businesses are usually either for short or long-term letting.

### Short-term letting

Operating a short-term *management rights* business is similar to operating a resort or hotel.

The *scheme* is promoted to tourists (holiday letting) and business people (corporate letting) for short-term stays.

The **main advantage** of short-term letting is the returns to the *resident manager* and *lot* owners are typically higher than for long-term letting.

Income streams in addition to rent can include cleaning services, linen charges, food service charges, commission from ticket sales to tourist destinations etc.

**Disadvantages** include the need to provide a higher level of service, increased front office hours, marketing requirements and seasonal income fluctuation.

### Long-term letting

*Schemes* in which *lots* are let for longer terms (normally six months or more) are often described “permanent *schemes*”.

There is likely to be a percentage of the *lots* in these *schemes* which are owner occupied and not let.

**Advantages** of permanent *schemes* include a more consistent stream of income and less marketing and front office duties than for short-term *schemes*.

**Disadvantages** include a lower rate of return than holiday and corporate letting and a higher risk of competition from off-site letting agents.

### Student letting

This is a growing sector in *management rights*. It can involve a combination of short and long-term letting which coincides with university semesters and exams.

## TIP

**Tip:** Build strong working relationships with all your *lot* owners. Avoid the complex politics.

## Established or off-the plan

The majority of people who buy *management rights* buy an existing business. However, you can also buy new *management rights* businesses – known as buying “off the plan” in new developments.

- **Established Business:** The advantage of buying an established *management rights* business is the relative certainty of an existing business. You can review the documented history of the business and the *scheme*.
- **‘Off the Plan’:** Buying a *management rights* business directly from a developer of a new *scheme* comes with more risk. You need to get people buying *lots* off-the-plan to appoint you as their letting agent. The form of sale contract is very important to protect a buyer from paying too much based on a developer’s glass half full picture of what the letting pool **may** become.

**TIP**

**Tip:** When buying off the plan work with the developer to maximise the initial letting pool.

# The agreements and the services

## Body corporate agreements

The right to provide *caretaking services* and *letting services* for a *scheme* is granted and protected under a contract between the *resident manager* and the *body corporate*. Often there will be an agreement for the *caretaking services* and a separate agreement for the *letting services*.

The term of the *caretaking and letting agreements* can be up to 25 years depending on whether the *scheme* has been created under the accommodation or standard Module.

When *management rights* are sold, the *resident manager’s* rights under the *caretaking and letting agreements* are assigned to the buyer with the consent of the *body corporate*. A deed of consent and assignment between the *resident manager*, the *body corporate* and the buyer is signed to record the assignment.

**TIP**

**Tip:** The success or failure of a *management rights* business can be determined by the terms of the *caretaking and letting agreements*. We will ensure these agreements are binding, enduring and reflect the business you understand you are buying.



## Caretaking duties and income

A major element of any *management rights* business is caretaking the *common property*.

In most cases the *caretaking agreement* will list the *caretaking duties* and the frequency of which they must be performed in some detail. Review this list carefully so you understand the extent of the *caretaking duties*.

Normally, *caretaking agreements* require the *resident manager* to carry out the *caretaking duties* personally (this can include the caretaker paying a contractor or employee to do so).

Some *schemes* do have *caretaking agreements* which only require the manager to supervise contractors engaged and paid by the *body corporate* to perform the *caretaking duties*. These are not that common.

Under the *caretaking agreement*, the *body corporate* will pay the *resident manager* a fixed annual remuneration (plus GST) in exchange for the performance of the *caretaking duties*. Usually the remuneration is paid monthly in arrears and increased annually by CPI or a fixed percentage.

### TIP

**Tip:** As the *resident manager*, you are an independent contractor of the *body corporate*, not an employee. You pay your own tax from the remuneration. Ask your accountant to ensure your new business has an Australian Business Number (ABN), tax file number and is registered for GST.

## Letting

A typical *management rights* business includes a letting agreement between the *resident manager* and the *body corporate* which grants the *resident manager* a right to conduct a letting business within the *scheme*.

*Lot* owners choose whether to let their *lot*, live in it or lock it up. They are also free to use an outside real estate agent to let it for them. However, most prefer to appoint a *resident manager* as their letting agent. If your letting agreement and the *scheme* by-laws are properly drafted, only the *resident manager* will be able to run a letting business from within the *scheme*.

**Letting appointments:** By law, a *resident manager* must enter into a separate contract (known as a letting appointment) with each *lot* owner who elects to appoint the *resident manager* to let their *lot*.

There is a statutory form of letting appointment which must be used, but you can add special conditions. Your lawyer can assist with that.

Under the letting appointment, a rental commission is paid by the individual *lot* owner to the *resident manager* for letting their *lot* in the same way a rental commission would be paid to an outside real estate agent. No fee is paid by the *body corporate* for *letting services*.

There is potential to earn extra income (in addition to rent commission) by providing extra services for *lot* owners. Generally, the scope for additional income streams is greater in holiday or short-term *schemes*. Additional services may include things like cleaning, linen, repairs and maintenance, equipment hire and sales of tours and theme park tickets.

### NOTE

**Note:** you need to be a licenced agent under the relevant state law to be able to lawfully let *lots* and collect rent. We have made some comments about licensing in the next section of this guide.

### TIP

**Tip:** Keep your *lot* owners happy by keeping them informed about the letting of their *lot* and the *scheme* – regular contact by phone or email is important.

# Steps before contracting to buy

## Preliminary Matters

**Industry professionals:** To buy *management rights* you will need to deal with a real estate agent, an accountant (to check the books), a finance broker / financier to arrange a loan (if you don't have all the equity) and a lawyer (to carry out legal due diligence).

Ideally, you should deal with industry professionals who have significant experience in the *management rights* industry. This will make the process more efficient and mitigate the risk of buying a lemon.

**Budget and type:** Work out your budget and the type of *management rights* you want to own before you start looking. This will refine your search for the right *scheme*.

A good finance broker will be able to advise you what your borrowing capacity will be. As a rule of thumb, banks typically lend between 50% - 60% of the combined purchase price of the business and *lot*. Remember to factor in stamp duty, licence fees, bank fees, accounting and legal fees. We recommend you allow for 5-6% of the purchase price for these costs.

**Structuring:** We will engage with your accountant from the outset to ensure the most appropriate legal entity is used to buy the business and the *lot*. Depending on your personal circumstances, this may be a company, a discretionary / family trust, a unit trust, an individual or a combination of these. Making sure the right entity or person owns the business and the *lot* is important to minimise tax liabilities and maximise asset protection.

**Paying the right price:** The value of the *lot* will be reflected by the market value of similar *lots* in your complex and nearby *schemes*. Office and storage space on title may impact the value. The value of the *management rights* business is determined by using a multiplier on the net profit. For example, if the net profit of the business is \$100,000.00 per annum and the multiplier is 4, the business price is \$400,000.00.

The size of the multiplier is set by the market. Do some research on recent sales of similar management rights. Your broker and agent should be able to give you examples.

## TIP

**Tip:** If you are not sure of value, you can pay for an independent valuation from an industry expert. Your bank may require this in any event as part of your finance approval process. We have contacts if you need a referral for valuation purposes.

**Licensing requirements:** To run the letting component of a *management rights* business you require a real estate agent's licence. This can be a restricted licence which allows you to let and sell *lots* in your *scheme* only or a full real estate agent's licence which allows you to let and sell *lots* inside and outside your *scheme*.

The restricted licence is quicker and easier to get. In summary, it involves taking subjects via a registered training organisation (this can be done online), paying a licence fee and undergoing a satisfactory criminal history check. You should enrol and undertake the subjects sooner rather than later.

## Term sheet

Before the lawyers get involved, it is good idea for the seller and buyer to sign a simple one/two page document recording the key terms already agreed—e.g. price, deposit, buyer conditions and time frames for satisfaction of buyer conditions and settlement (this is often referred to as a "heads of terms" or "term sheet").

Having a term sheet signed can avoid costly lengthy negotiations when the formal contract documents are prepared.

Be wary of lawyers that quote you a fixed fee to prepare the contracts, but say they can't control negotiation that will be required and therefore have to charge hourly rates for negotiations. This sort of arrangement incentivises the lawyer to make agreeing the contract documents difficult.

Most good agents will ask the parties to enter into a term sheet.

## TIP

**Tip:** make sure the term sheet states the deal is subject to formal contract documents being agreed and signed.



# Steps after signing a contract

## The contracts

When you buy management rights, you will almost always sign two contracts—one for the *lot* and one for the business. The contracts will be interdependent on each other (i.e. you can't buy the business without the *lot* and vice versa).

## The key conditions

*Management rights* sale contracts will usually be subject to four key conditions shown in the table below. The order of the conditions and timeframes in the table is typical. Your lawyer will help manage the timeframes and negotiate to the timeframes changes as necessary.

| Requirement / Milestone                                     | Due Date                              |
|---|---------------------------------------|
| Contract signed   | Day one                               |
| Verification of financial records by the buyer's accountant | 14 days after signing contracts       |
| Legal due diligence satisfactory to the buyer               | 21 days after signing contracts       |
| Finance approval satisfactory to the buyer                  | 28 days after signing contracts       |
| Body corporate consent to the assignment                    | Before settlement                     |
| Settlement  | 60 to 90 days after signing contracts |

## Verification of financial records

The first step after signing the contract is your accountant verifying the financial records of the business (is the net profit what the seller says it is?).

The contract will usually allow 14 days for the financial records due diligence process to be carried out.

The accountant will go to the *scheme* to review the seller's business books, records and systems, discuss any issues with the seller and prepare their report. The report should cover (amongst other things) a detailed break down of annual revenue and expenses for the business and the sustainability of those, trust account compliance, service agreements (if any), employees (if any) and a summary of the *letting appointments*.

If you are satisfied with the report, your lawyer will advise the seller's lawyer this condition is satisfied. If the figures don't stack up, discuss this with your accountant and your lawyer. You can always attempt to negotiate a change to the price to reflect the real figures.

## TIP

**Tip:** make sure you give your lawyer a copy of your accountant's report. Your lawyer should have seen a lot more of these than you have and should be able to give you an opinion on any issues highlighted by your accountant.

## Legal Due Diligence

After you confirm satisfaction with the business financial records, your lawyer will complete legal due diligence on the *management rights* business, the *lot* and the *scheme*.

The contract will usually allow 21 days for the legal due diligence process to be carried out.

The lawyer will obtain copies of the *caretaking and letting agreements* from the seller's solicitor or agent and undertake their own statutory searches on the seller, the *community title / strata scheme*, the business and the *lot*.

Your lawyer should prepare a report which covers at least the following:

- overview of the title for the *lot* and any rights to use office or storage areas for caretaking and letting purposes;
- a commentary on the key terms and enforceability of the *caretaking and letting agreements*;
- a commentary of the community management statement and by-laws for the *scheme*;
- a commentary on the *body corporate* records relevant to the *management rights* business; and
- a summary of any other business assets, including plant and equipment and transferable intellectual property (i.e. website domain, business name transfer, trademarks, transfer of phone number etc).

## TIP

**Tip:** Banks will require a comprehensive due diligence report to properly assess lending risk and ultimately approve your loan. There are reports and there are reports. You really need a specialist accountant and lawyer to prepare the reports or your bank may reject them.

## Finance Approval

Most *management rights* contracts will allow the buyer 28 days to obtain a satisfactory finance approval. Your broker should manage this process. You will need to supply the broker or bank with your accountant's financial verification report and the lawyer's legal due diligence report.

The bank will usually need a valuation of the *lot* and may also require a valuation for the *management rights* business.

The bank will take security in the form of a security interest over the *management rights* business and a mortgage over the *lot*.

**TIP**

**Tip:** Make sure your bank sets up merchant facilities and a trust account before settlement.

## Settlement

Once all of the conditions in the contract are satisfied and the deed of assignment and consent is signed by the *body corporate*, seller and buyer, settlement can proceed.

Your lawyer will make the necessary arrangements for settlement and transfer of the title for the lot and business to you.

You should be on-site in the week leading up to settlement to take a handover of the business.

Once settlement has occurred, if the contract required it, the seller may provide after settlement assistance and training.

**TIP**

**Tip:** Don't rely on after settlement assistance from a seller. Their motivation is understandably a lot higher before settlement.

## Body Corporate Consent

The last contractual condition is obtaining the consent of the *body corporate* committee to the assignment of the *caretaking and letting agreements* to the buyer.

The *body corporate* cannot take any longer than 30 days to consent to the assignment. This 30-day period starts when the *body corporate* is provided with the information it needs to consider the buyer's suitability for the role as a *resident manager* for the *scheme*.

Usually this will be:

- a CV showing qualifications and business experience of the person(s) who will own/control the business;
- business and character references (two of each is usually fine);
- evidence of your financial position (e.g. a statement of assets / liabilities and a copy of the approval letter from your bank (if you are getting finance); and
- a police check for any directors or persons who will be involved in the day to day running of the business (these are relatively easy to get).

When the committee has this information, you will need to meet with them. Don't be concerned about this. It is usually a pretty informal meeting.

Your lawyer will agree the terms of the deed that records the assignment of the *caretaking and letting agreements* to you and the consent of the *body corporate*. You, the seller and *body corporate* will then sign this deed.

|  |   |
|--|---|
| <b>Administrative fund</b>                     | A fund for everyday expenses of the body corporate (i.e. building pool and ground maintenance, management fees and pest control).   |
| <b>BCCM Act</b>                                | The <i>Body Corporate and Community Management Act 1997</i> (Qld) which is the legislation governing community titles schemes in Queensland.  |
| <b>Body corporate</b>                          | A separate legal entity – like a company, that is created to control the common property. All owners are members of the body corporate. It has an elected committee.  |
| <b>Body corporate manager</b>                  | A person who is engaged by the body corporate to supply administrative services to the body corporate (i.e. issue invoices for levies, keep books for the scheme and arrange body corporate meetings).                              |
| <b>By-laws</b>                                 | The body corporate rules relating to the use of the common property. By-laws detail the responsibilities of the body corporate and apply to everyone entering the complex including owners, tenants and guests.                     |
| <b>Caretaking agreement</b>                    | The agreement between the body corporate and the resident manager under which the resident manager agrees to provide caretaking services in return for payment of remuneration by the body corporate.                               |
| <b>Caretaking duties or services</b>           | The caretaking duties required to be provided by the resident manager under the caretaking agreement.   |
| <b>Committee</b>                               | A committee made up of lot owners and sometimes the body corporate manager elected by members of the body corporate and tasked with the administrative and day-to-day running of the body corporate.                                |
| <b>Common Property</b>                         | The property which is shared by owners and tenants such as foyers, hallways, swimming pools, gardens and tennis courts and other recreational facilities.   |
| <b>Community management statement</b>          | Also referred to as the ‘CMS’ this is a document containing the by-laws, a description of the real property (i.e. land) in the scheme and the lot entitlements for the lots in the scheme.  |
| <b>Community Title Scheme or Strata Scheme</b> | Property which has been subdivided into separate titles or lots (i.e. units or townhouses) and common property. Ownership of each lot is separate, but the lot owners (collectively as the body corporate) own the common property. |
| <b>Letting agent</b>                           | Another name for a resident manager who is authorised by the body corporate to conduct a letting business for the lots within the scheme.   |



|                            |  |
|----------------------------|--|
| <b>Letting agreement</b>   | The agreement between the body corporate and the resident manager under which the body corporate authorises the resident manager to provide letting services from within the scheme.   |
| <b>Letting appointment</b> | A separate contract in a statutory form entered into by the resident manager with each lot owner who elects to appoint the resident manager to let their lot.  |
| <b>Letting services</b>    | The services provided by the resident manager for securing, negotiating and enforcing (including collecting rents) leases or other occupancies of lots within the scheme.  |
| <b>Lots</b>                | The pieces of property in a community titles scheme owned by individuals (i.e. a unit or townhouse).   |
| <b>Management rights</b>   | The business of on-site caretaking within a scheme and the letting of lots within the scheme.  |
| <b>Modules</b>             | Groups of regulations for the different categories of community titles schemes under the BCCM Act. The Standard and Accommodation modules almost exclusively apply to management rights businesses.                                      |
| <b>POA</b>                 | The <i>Property Occupations Act 2014</i> (Qld) which is the legislation that regulates all real estate agents in Queensland including resident managers who are letting lots.  |
| <b>Resident manager</b>    | The owner of the management rights. The BCCM uses the terms 'service contractor' and/or 'letting agent'. Other names include residential accommodation manager ('RAM') or resident unit manager ('RUM') or on-site manager or caretaker. |
| <b>Scheme</b>              | Short name for a community title scheme (Qld) or strata scheme (NSW).  |
| <b>Sinking fund</b>        | A fund for capital expenses of the body corporate (i.e. replacement of lifts, pool refurbishment and equipment and replacement of fencing).  |
| <b>Strata Title Scheme</b> | The name given to a community title scheme in NSW.   |