



Legal Guide for Buyers of Rent Rolls

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Introduction

A significant percentage of residential properties in our major cities are now owned by investors.

These investors need someone to manage their properties and are willing to pay for the service.

As a result, over the last 20 years (in particular), rent rolls have become valuable businesses – both for their ongoing income stream and their capital value.

With the housing market now tightening up and down the Eastern seaboard (and income from sales commissions dropping) the income from rent rolls is a real focus for agencies.

No surprise the bigger players are reacting to the current climate by snapping up rent rolls for sale in an effort to consolidate ownership of the income stream they offer.

Getting it right the first time around

Clients tell us owning a rent roll is a rewarding and (often) challenging experience.

Getting it right from the outset—by identifying and buying the right rent roll for your circumstances—is critical to achieving the return you want on your investment.

We have acted for successful rent roll owners who bought the wrong rent roll the first time around, learned lessons and got it right the second time.

Don't fall into that trap for reasons within your control.

Contents

This guide is intended to assist rent roll buyers to ask the right questions and seek the right advice before committing to a purchase. It includes:

- a quick blurb about Amity Law;
- the steps we recommend a buyer takes before signing a contract to buy a rent roll;
- the steps we recommend a buyer takes after signing the contract;
- a section on agency appointments and how to deal with the transfer of those on settlement; and
- comments on settlement arrangements, calculation of the purchase price and the post settlement retention.

Your Queries

There is a lot more to know about rent rolls than what we have briefly covered in this guide.

Please feel free to contact us by phone or email at any time. We will always be available to respond to your queries on any aspect of the purchase, sale, valuation or operation of a rent roll.

Your key contacts at Amity are on the next page. Contact details for all our lawyers are on our website –

www.amitylaw.com.au.

If you are considering buying a rent roll 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 focus is the accommodation industry. We specialise in acting for owners of:

- rent rolls and management rights;
- motels and tourist parks;
- land lease communities; and
- Hospitality businesses (hotels, pubs and restaurants).

Our lawyers have more than 30 years experience helping clients buy, sell, finance, let, negotiate, dispute and protect their accommodation businesses and investments. We know the industries, know the players and we use this knowledge to get you results.

Clients

Our clients are owners and property managers, both individuals and corporations (experienced and new to the industry).

Key contacts at Amity Law

We operate a single point of contact service delivery model. Your primary points of contact at Amity Law would be Matt Allen and Lucy Ross.

Matt is a director. Lucy is an experienced commercial property lawyer who specialises in rent rolls and management rights. Either Matt and Lucy 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 us?

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

- distinctive competence in our areas of specialisation;
- 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;
- a single point of contact service delivery model; and
- a focus on delivering value - we do legal work for fixed fees agreed upfront with you.

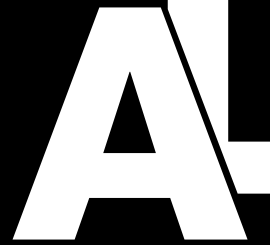
These things are ingrained into our firm culture and define the way we operate.

Our service guarantee

We guarantee you will receive the highest quality service throughout your matter. We cannot guarantee outcomes, but we do guarantee satisfaction with our services.

If we do not perform to your satisfaction, or if you have any queries relating to our work or fees, let us know. We will seek to resolve the matter to your satisfaction.

Steps before signing the contract



Don't charge in to signing a contract to buy a rent roll.

This section of the guide runs through steps we think you should take before signing a contract.

Preliminary Matters

Industry professionals

Work out who you are going to use to assist you with acquiring the rent roll and let them know your proposed time frames.

To buy a rent roll you will typically need to deal with:

- a rent roll broker;
- a specialist valuer and/or real estate industry consultant to:
 - value the rent roll; and
 - assist with carrying out operational due diligence;
- a finance broker / financier to arrange a loan (if you are using debt to make the acquisition);
- a lawyer to undertake legal due diligence, prepare and negotiate the contract and arrange the conveyance of the rent roll to you; and

perhaps also an accountant to check the books and assist with your structuring (particularly if you are buying the whole agency – not just the rent roll).

Make sure you do reasonable due diligence on the industry professionals you propose to use.

TIP

Tip: Deal with industry professionals who have experience with rent rolls. It will make the process more efficient, cost less and mitigate the risk of buying a lemon.

Budget and type

We think it is best practice to work out and settle on your budget and the type and size of rent roll you want to own before you start looking.

The industry method of valuing a rent roll adopts a multiplier to the annualised management fee income.

The multiplier adopted will be affected by a range of factors including:

- the average annual rent and rental commission payable for each property;
- the type, location, desirability and geographic spread of the properties;
- the ratio of owners to properties in the rent roll (i.e. whether there are owners with multiple properties on the rent roll); and
- external economic conditions (e.g. the number of buyers in the market for rent rolls in the area).

Depending on the above (and other) factors, the multiplier will typically be 2-3.5 times the annual management fee income.

TIPS

Tips:

- Do your research on recent sales of similar rent rolls. Your broker should assist here.
- Communicate your budget to your broker. It will refine your search and save you time.
- Remember to factor in stamp duty, consultant's fees and bank fees (if you are using debt). A good broker will be able to advise you on what your likely borrowing capacity will be.

Structuring

Making sure the right entity or person owns the business and assets is important to minimise your tax liabilities and maximise asset protection on the go forward. We will discuss this with you from the outset to ensure the most appropriate legal entity is used to buy the business.

Depending on your personal circumstances, it may be a company, a discretionary / family trust, a unit trust, a partnership, an individual or a combination of these.

TIP

Tip: Get your buying entity created before you sign the sale contract.

Licensing requirements

It seems obvious, but make sure your real estate agent's licence and anyone you intend to employ as a property manager is current by the time you propose to settle.

If you are using a company to buy the rent roll, ensure your corporate real estate agent's licence is current or (if you don't have one) you get a corporate licence in time for settlement.

Term sheet

Before the lawyers draft the formal contract, it is always a good idea for the seller and buyer to sign a document recording the key commercial terms agreed—e.g. how the price will be calculated, deposit, buyer conditions and time frames (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.

Most good brokers will encourage 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. You don't want to be bound until all the details are agreed.

The contract

We do not want to bore you with a recitation of what is in a rent roll contract—so this is a short section.

Form

The formal contract used to buy and sell rent rolls is a business sale agreement.

Depending on your timing and structuring, you may also need to sign an option deed for tax and structuring reasons (but this is not typical for rent rolls).

Make sure you read the business sale agreement carefully before you sign and raise any queries with your lawyer.

Industry expertise

Given the (often significant) amount of money changing hands for the sale and purchase of a rent roll, it is extremely important the transaction is properly documented.

If something does go wrong and the parties have to look to the fine print, there is no substitute for a properly drafted agreement which includes:

- all of the usual provisions you would expect to see in a business sale agreement; and
- bespoke provisions which deal with the circumstances which are unique to rent rolls.

There is no industry wide standard form business sale agreement used for rent rolls. As a consequence, the quality of the business sale agreements used for rent rolls varies widely.

To protect your investment, you should use a lawyer who has at least some experience in rent roll transactions to prepare or negotiate your business sale agreement.

TIPS

Tips:

- Ask your lawyer about their prior experience before you engage them.
- Ask other consultants you are using or know of in the industry if they know the lawyer you propose to engage.

Steps after signing the contract

Once you have a rent roll under contract, the heavy lifting in respect of your due diligence and finance arrangements can be kicked off in earnest.

The key buyer conditions / mile stones

The table below lists the buyer conditions and the timeframes you would expect to see in a rent roll business sale agreement.

The order of the conditions and timeframes shown is typical.

This section of the guide uses the usual buyer conditions as the framework to discuss the steps a buyer should take after signing the business sale agreement.

Timeframes

Time is of the essence in QLD business sale agreements and there are contractual consequences for not meeting the timeframes (if the other party wants to enforce those).

We will work with you to manage the timeframes and (if necessary) negotiate changes to them.

TIP

Tip: Make sure both you and your finance broker are comfortable with the time frames for buyer conditions before you sign the business sale agreement.

Requirements / Milestone	Due date
Contract Signed	Day one
Due diligence on property management files and financial records	21-28 days after signing contract
Legal due diligence satisfactory to the buyer	21-28 days after signing contract
Finance approval satisfactory to the buyer	21-28 days after signing contract
Landlord consent to grant new lease or assignment of lease (only if buying an agency with a premises)	By settlement
Contract Settlement (including transfer of the seller's appointments) signed	60-90 days after signing contract
Retention adjustment	90 days after settlement

Due diligence on property management files / financial records

The most important component of your due diligence on a rent roll will be the review of the seller's property management files and records (both hard copy and electronic).

The contract will usually allow 21-28 days for this process to be carried out, so you will need to get cracking on it immediately after the contract is signed.

Do a thorough due diligence

A due diligence on a rent roll amounting to a quick review of only a sample of the seller's property management files is very risky.

This will not show what you need to know before you commit to buy.

Most industry experts will advise a due diligence on a rent roll should include (as a minimum) a full review of:

- hard copies of agency appointments and tenancy agreements for each property; and
- the electronic records held by the seller for:
 - each of the properties; and
 - the financial records of the overall rent roll.

Get a valuation

We recommend you get a valuation—even if you are not required to get one by your financier.

A valuation (in addition to giving you comfort around the price) is a very valuable due diligence tool to assess if the income the seller says is generated by the rent roll is accurate and sustainable.

Use and industry expert

Rent rolls are unique businesses.

We highly recommend you engage an experienced industry consultant/valuer to assist you with your due diligence on the rent roll.

It often takes industry knowledge about the software systems used by the seller's agency and quite a bit of digging by someone who knows what they are looking for to reveal the true picture.

Don't use your lawyer or accountant

Don't use your lawyer or your accountant to review the property management files:

- firstly, because it is not cost effective; and
- secondly, because they will invariably be unfamiliar with the seller's software program and the nuts and bolts of the day to day operation of a rent a roll.

Our recommended due diligence consultant

There are very few consultants in the real estate industry with the requisite expertise to both value and undertake a thorough operational due diligence on a rent roll.

For due diligence on and valuations of rent rolls—we refer buyers to Tarsi Hynes, the owner/director of Opulence Consultancy.



She is a highly qualified real estate industry specialist with over 20 years of real estate industry experience valuing and carrying out due diligences on rent rolls.

Tarsi has also successfully owned and operated her own real estate agency—so she understands intimately the challenges rent roll owners face and how best to mitigate the risks associated with buying a rent roll.

Contact details for Tarsi are set out below:



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Tips and traps

At the risk of sounding like a broken record, the best tip we can give buyers is to use experienced, qualified industry experts and lawyers. The table below includes some general tips and traps and comments on things to consider when you are in the due diligence phase of the acquisition. It is not an exhaustive list by any means.

Location and type of property Where are the properties located? How far do you need to travel? What are the neighbouring properties and suburbs in which the properties are located like. Are the properties furnished or unfurnished? All these things and other location considerations should be taken into account.	Vacant properties If there are vacant properties in the rent roll, investigate how long they have been vacant for and why.	Property management software What software is being used by the seller? Is it user friendly / can it be integrated with your system (if you already have one)? Can you take a transfer of the software licence and if you can, what are the licence fees?
Rent / fee increases Are the rents and/or fees charged by the seller typical for properties in the area or areas in which the properties are located? When were the rents last increased? Is there an opportunity to increase the rent the tenants are paying (often there is an opportunity to add value by simply doing this).	Arrears Are there any arrears issues? How bad are they and how many properties are affected? You don't want to pay for properties you will ultimately struggle to earn income from for a period of time because of existing bad tenants.	Tenant payments How do the tenants pay their rent? How are statements issued to tenants and the owners? Is there a good software system in place or will you need to change it and re-educate owners and tenants to improve this?
What fees (in addition to rental commission) does the seller charge Carefully consider what fees the seller currently charges property owners and how much. Are there re-letting fees, property inspection fees, exit fees, maintenance fees, bank transaction fees etc. For how long has the seller charged these fees. Is there room to add or increase any of these fees?	Length of Appointments How long have the seller's Appointments been in place (on average)? Typically, the longer an Appointment has been in place, the less risk the property owner will end the appointment due to the sale of the rent roll. Investigate the reasons behind any significant loss of Appointments over last year or so.	Employees Employees are key to the success of a rent roll. Good property managers are gold. To ensure a smooth transition of agency appointments it is usually a good business decision to take on some or all of the seller's employees. Try to interview the seller's employees. It is sometimes surprising what they reveal. Check with your lawyer the sale contract does not oblige you to take on the seller's employees if you don't wish to do so. Also check with your lawyer who is responsible for paying out entitlements due to existing employees.

Tenancy disputes

Is there are history of tenancy disputes? Are there any tenancy tribunal hearings or insurance claims pending? Consider how time consuming and costly these may be.

Properties listed for sale

Check if any of the properties in the rent roll are currently listed for sale.

Service / supply contracts

Consider if you want to take over some or all of any service and supply contracts and/or software licences held by the seller (e.g. cleaning contracts, licence to use booking software programs etc). If you don't, make sure your lawyer confirms the contract does not require you to do so and you are not responsible for any penalty payable by the seller for early termination. If the assignment of the seller's service or supply agreement / software licence requires the consent of the provider / supplier, check with your lawyer the contract makes the seller responsible for getting this consent prior to settlement.

Instruct your lawyer

If you are satisfied with your due diligence on the property management files and financial records of the rent roll, you will need to instruct your lawyer to advise the seller's lawyer this condition is satisfied.

If the due diligence reveals issues with the rent roll, discuss these with your industry consultant and your lawyer.

You can always negotiate a change to the business sale agreement (including the price) if the real position is less rosy than advertised.

Legal due diligence

Rent roll only

If you are buying the rent roll only (not the agency), the legal due diligence will often be minimal.

Your lawyer can answer any specific legal queries you or your other consultants may have, including about the form of agency appointments or tenancy agreements etc.

Make sure you give your lawyer a copy of any due diligence report or valuation you obtain from another consultant so they can review and discuss this with you—and if necessary, negotiate changes to the business sale agreement.

Buying the agency

If you are buying an agency (and not just the rent roll), the legal due diligence will be more extensive.

Your lawyer should:

- review and advise you on any relevant service contracts, software licences, industry group memberships and intellectual property rights you are acquiring;
- undertake, review and advise you on statutory searches on the seller and any other business assets you are acquiring; and
- if you are taking a lease of the seller's business premises, your lawyer will also need to review and advise you on the form of lease and (if applicable) the form of deed used to assign this to you.

The business sale agreement will usually allow at least 21 - 28 days for the legal due diligence process to be carried out.

The report prepared by your lawyer should cover at least the following:

- a summary of the title to and any encumbrances affecting business assets you are acquiring, including plant and equipment and transferable intellectual property (i.e. website domain, business name transfer, trademarks, transfer of phone numbers etc);
- a commentary on any service contracts, software licences or franchise agreements/industry membership agreements relevant to the business and any issues associated with these or the transfer of these to you on settlement;
- a commentary on the key terms, enforceability and risk issues associated with the lease of business premises (if applicable); and
- most importantly, a summary of risk issues the legal review has highlighted and steps that can be taken to eliminate or mitigate those risks.

TIP

Tip: Don't accept a report from your lawyer that just repeats what search results already say and highlights risks without suggesting solutions. What you need from your lawyer are recommendations for concrete steps that can be taken to eliminate or mitigate risks highlighted by the legal due diligence.

Financial approval

When you are using debt to fund the purchase, most contracts will allow 28 days to obtain a satisfactory finance approval.

If you are using a finance broker, they should manage the process and the timeframes.

You may need to supply the broker or bank directly with your property management/ financial verification report and/or your lawyer's legal due diligence report.

The bank will usually require a valuation for the business.

The bank will take security in the form of a security interest over the business assets and a charge or mortgage over the buyer's interest in the lease (in the case of leasehold business premises).

Buying the agency

If you are buying an agency and taking a lease of the seller's business premises, the business sale agreement should be conditional on the landlord consenting to an assignment of the existing lease or granting you a new lease (and the documents recording this being signed by all parties).

Typically, a lease will allow the landlord 30 days to consider a request for consent to an assignment of the lease.

This 30-day period starts when the landlord is provided with the information it needs to consider the buyer's suitability as a tenant.

The information required under the lease will normally be (at least):

- 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/or 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 landlord has this information, it is likely you will need to meet with them.

Your lawyer will agree the terms of the deed that records the assignment of the lease of the business premises to you and the consent of the landlord (or the terms of a new lease if applicable) and arrange for those to be signed.

TIP

Tip: Take the opportunity to meet the landlord to try and get a gauge on your ability to work with the landlord in the future.

Agency appointments

Once all of the buyer conditions in the contract are satisfied you can get started on your preparations for settlement and taking over the rent roll.

A focus in the lead up to settlement is ensuring the successful transfer of the seller's agency appointments (Appointments) to your buying entity.

This section of the guide discusses Appointments in some detail and includes recommendations for what the business sale agreement should say about transferring Appointments.

However, we want to emphasise there is more to know about Appointments than we have set out in this guide, so if you have any queries about Appointments and/or the legislation which affects them, please give any of our lawyers a call.

Agency appointments (Appointments)

The right to receive the income earned by a rent roll is transferred to a buyer via an assignment of the seller's Appointments on settlement.

Checking the seller's Appointments are in the right form, are enforceable, are able to be transferred on settlement and reflect the property/tenancy schedule annexed to the rent roll sale contract is a critical part of your due diligence (refer to our due diligence section above).

Form of Appointments

The Property Occupations Act 2014 (POA) is the primary legislation governing letting of real estate in QLD.

The POA prescribes the form of Appointments which must be used for the appointment of a property manager by a property owner (i.e. for an Appointment to be binding, it must be in the prescribed form).

The current prescribed form is called the "Property Occupations Form 6 – Appointment and reappointment of a property agent, resident letting agent or property auctioneer". It has been effective since 1 August 2016 and is available online for no cost.

The Form 6 is a straight forward document and one all property managers and anyone with a real estate licence will be familiar with.

If you buy an established rent roll, it is very likely there will still be at least two types of Appointments. The current Form 6 and the older Form 20a PAMDA Appointment which was prescribed by the now repealed Property Agents and Motor Dealers Act 2000 (PAMDA). There may also be pre PAMDA appointments.

Provided they are in the form required under the legislation in place at the time the Appointments were signed, these Appointments are valid.

Term of Appointment

The Appointments should be continuing Appointments with no end date.

Under the POA, Appointments may be terminated by either the property owner or the agent giving 30 days' notice. You cannot contract with property owners to have a longer notice period.

The potentially short life time of Appointments highlights the importance of your ongoing relationship with the property owners – something that must be quickly established and carefully nurtured.

- o the Appointment has been assigned without changing the terms of the Appointment; and
- o the Appointment may be cancelled by the property owner on 30 days' notice.

If the notice is given by the buyer strictly in accordance with the requirements of the POA, the POA deems that from settlement the Appointment is taken to be a binding appointment by property owner of the buyer and to continue on the same terms agreed between the property owner and seller.

Transfer of Appointments

Ensuring the seller's Appointments are transferred to you on settlement is key to transacting a rent roll. This section discusses the requirements under QLD legislation to validly transfer Appointments and ways to mitigate the risk of paying a multiplier for the annual management fee earned under Appointments which do not continue after settlement.

Form 6 Appointments

The POA specifies Form 6 Appointments are automatically assignable. There is no requirement to obtain the consent of the property owner to assign a seller's Appointments to a buyer at settlement, provided the terms of the seller's Appointment are not changed after the Appointment is signed.

To perfect the transfer, the POA requires the buyer to give a notice to each property owner within 14 days of the Form 6 Appointment being assigned (i.e. within 14 days of settlement). The notice must state:

- o the buyer's name and contact details;
- o the address of the buyer's registered office;

Form 20a PAMDA Appointments

Form 20a PAMDA Appointments are also assignable, but only if when the Appointment was signed by the property owner:

- o the property owner ticked the box in the Form 20a PAMDA Appointment which provides the property owner consents to an assignment; and
- o this was initialled; or
- o the property owner separately consents to an assignment of the Appointment in writing.

If you are buying a rent roll with Form 20a PAMDA Appointments, we recommend the business sale agreement requires the seller to have those replaced with Form 6 POA Appointments before settlement (but note seller's may resist this requirement). If you are getting finance to buy the rent roll, it is possible your bank will require this.

What should the contract say about the transfer of the Seller's Appointments?

We recommend the business sale agreement ideally (from a buyer's perspective):

- requires the seller to have PAMDA Appointments replaced with Form 6 Appointments prior to settlement;
- requires the seller to notify the property owners of the sale at least 14 days prior to settlement (provided all buyer conditions are first satisfied);
- allows the buyer to have input on the form of notice to be given by the seller to the property owners (buyers should consider preparing an introductory pack to send to property owners with the notice);
- requires the seller to provide evidence the notices have been sent at settlement or (even better) allows the buyer to issue the notices;
- allows the buyer to contact the property owners prior to settlement (after the contract is unconditional and the property owners have been notified of the sale);
- requires the seller to notify the buyer immediately if a property owner gives the seller notice it will cancel an Appointment as a consequence of being advised of the sale;
- requires the seller to provide an up to date list of Appointments prior to settlement and warrant that it is correct and the only cancellation notices it has received from property owners have been disclosed to the buyer;
- includes a formula to calculate the purchase price based on the number of valid Appointments in place at settlement; and
- includes a provision which requires at least 20% of the price to be paid into a trust account and held for three months after settlement, following which it is dispersed according to the number of Appointments paid for which are still in place three months after settlement (see comments on retentions on the post settlement page of this guide).

Sellers with well organised successful rent rolls should be comfortable with this (or a similar) approach.

TIPS

Tips:

- Some banks will not accept PAMDA Appointments any more – so buyers getting finance should require the seller to enter into Form 6 Appointments with all their property owners prior to settlement.
- Buyers should send introductory packs to property owners (and ideally meet or contact property owners) prior to settlement.

Settlement arrangements

If the business sale agreement has been properly drafted and the lawyers on both sides of the transaction are experienced, the settlement process itself should be relatively straight forward—all the hard work is done during the due diligence phase.

Your lawyer will make the necessary arrangements for settlement to occur, including:

- preparing and agreeing the settlement statement; and
- the transfer to you of the seller's agency appointments, the title for any business assets you are acquiring and any service, software and supply contracts you are taking over from the seller (if any).

Two things we recommend buyers stay intimately involved with in respect to settlement arrangements are:

- calculation of the purchase price; and
- arrangements for the handover of the seller's property management files.

The following section of this report discusses these.

TIP

Tip: Don't rely on after settlement assistance from a seller. Their motivation is understandably a lot higher before settlement, so if you need help from the seller, try to arrange to get that prior to settlement.

Calculating the purchase price

The one thing we ask all of our clients to check us on in the immediate lead up to settlement is the settlement statement and in particular the calculation of the price to be paid on settlement.

It is always a good thing for multiple sets of eyes to check the numbers.

Example formula

The method used to calculate the purchase price for a rent roll is relatively standard industry wide. There are exceptions, but the typical basic formula used is $A = (B \times C) + D$ where:

A = The purchase price.

B = The sum of the annual management fees paid under the Seller's Appointments.

C = The agreed multiplier (which would be specified in the contract).

D = An agreed fixed amount (if any) the buyer will pay for plant, equipment and other business assets.

Before you sign the business sale agreement, make sure you are clear about what you are agreeing to pay for the rent roll and how this will be calculated.

Discuss the formula with your lawyer. There is no one size that fits all.

Definitions

It is very important the definitions used for the purchase price formula in the business sale agreement are detailed and accurate or a buyer can end up paying more than they should.

For example, the definition of the annual management fee needs to cover off that:

- It is the annual management fee under each valid Appointment as at settlement only.
- It does not include income earned for admin fees, letting fees, reletting fees, inspection fees, maintenance fees, advertising costs or any amount other than the management fee.
- It is the annual management for a 12 month period from settlement.
- It is calculated as the sum of the weekly rent payable for each Property subject to a valid Appointment at settlement x commission rate/ 7 days x 365 days.

The definition of what amounts to a valid Appointment needs to cover off:

- The Appointment is between the registered owner of a property on the seller's rent roll and the seller.
- The Appointment is in the form required under the relevant legislation.
- The Appointment is complete, correctly signed and binding.
- The Appointment is a continuing appointment as at settlement.

- The Appointment is for a property with a current tenant.
- The seller has not received a notification from the property owner that the Appointment will be cancelled and/or the property sold.

There are other relevant definitions and more complicated formulas which can be used. A lawyer familiar with transacting rent rolls should be aware of what is required and able to discuss this with you.

TIPS

Tips:

- Make sure you discuss the mechanism for calculating the price with your lawyer.
- If your lawyer doesn't understand how rent rolls are valued – you will need to educate them so the contract correctly reflects what you are prepared to pay.

GST

There has been some uncertainty as to whether the sale of a rent roll (and particularly the sale of part of a rent roll) qualifies as a sale of a GST-free going concern.

In summary, the GST legislation provides that the sale of a business as a going concern is GST-free if all of the following apply:

- everything necessary for the businesses' continued operation is supplied to the buyer;
- the seller carries on the business until the day it is sold, that is, until settlement;
- the buyer is registered or required to be registered for GST;
- payment is made for the sale; and
- before the sale, the buyer and seller agree in writing that the sale is of a going concern.

The issue as to what is "necessary" for the businesses' continued operation arises particularly in circumstances where a sale agreement does not provide for the assignment of the lease of the business premises, the transfer of employees, or the business name.

Seller's records

For rent rolls, the property management files are paramount.

At settlement, make sure either:

- you or your lawyer collects:
 - the seller's property management files for each property on the rent roll; and
 - all of the other relevant business records, documents, books, files, reports, accounts and correspondence belonging to and used by the seller primarily in the conduct of the rent roll,

both in hard copy and electronic format; or

- if you are taking over the seller's business premises, these records are left on site.

Avoid the scenario where you are chasing the seller after settlement for records you need to operate the rent roll.

TIP

Tip: Take the opportunity to meet the landlord to try and get a gauge on your ability to work with the landlord in the future.

TIP

Tip: Buyers and sellers should seek their own tax/legal advice on the sale, including in relation to GST. We can assist with this.

Post settlement considerations

Once you settle, your primary focus will be on establishing relationships with the landlords and tenants to ensure continuity of the Appointments and fixing any issues revealed by your due diligence.

In respect of the business sale agreement, the two post settlement issues we like to discuss with our clients before the business sale agreement is signed are:

- the retention of part of the purchase price at settlement and how this is disbursed after settlement; and
- a binding restraint of trade on the seller and their employees.

The final section of this guide briefly discusses these two things.

Retention adjustment

It is typical for part of the purchase price for a rent roll to be held back at settlement and placed in a lawyer's trust account for a period of time after settlement (usually three months).

The primary reason for the retention is to protect the buyer against paying a multiplier for income which the buyer will not ultimately receive because Appointments held by the seller when the business sale agreement was signed are cancelled before the end of the retention period.

Amount of retention

The retention amount will normally be 20% of the purchase price payable.

It is critical from a buyer's perspective the business sale agreement adequately deals with the requirement for a retention. It must be clear about:

- what circumstances will trigger an adjustment of the purchase price at the end of the retention period; and
- how the retention monies are to be dispersed.

Most disputes between people buying and selling rent rolls are about the way the retention monies are dispersed after settlement.

Circumstances retention should cover

We have set out below circumstances which the retention provisions should cover off (Note: the list is not exhaustive):

- Appointments which are cancelled after the contract is signed and before the end of the retention period.
- Properties with significant rent/ outgoings arrears and/or tenancy disputes at settlement or at the end of the retention period.
- The buyer failing to manage the properties properly after settlement.
- New Appointments entered into between the contract date and the end of the retention period.

- Vacant properties prior to settlement, or between settlement and the end of the retention period.
- Vacant properties prior to settlement that have been tenanted between settlement and the end of the retention period.
- Properties listed for sale or sold prior to settlement, or between settlement and the end of the retention period.

TIP

Tip: Buyers should review and discuss the retention provisions with their lawyer. If they are not easy to follow it is usually because they are flawed.

This is the contractual obligation on the seller (or anyone associated with the seller) not to solicit business from the rent roll property owners (either directly or indirectly) or within a defined radius and for a defined period of time after settlement.

The courts take a very strict approach to restraint of trade clauses. If the court can read them down (i.e. find they are not fully enforceable) they will.

It is imperative restraint of trade provisions are properly drafted and your lawyer is aware of the current law regarding restraints.

Goodwill and restraint of trade

Goodwill is an intangible asset.

It is the existing value associated with a rent roll business because of its brand, customer base, good customer relations and its good employee relations etc – or in other words the inherent reasons why the rent roll business is successful.

The most important factor which comprises the goodwill of a rent roll business is the property manager's relationship with the property owners and tenants.

We think there is no effort to establish and maintain these relationships which is a wasted effort.

Because of the importance of the relationship with the property owners – the sale contract must include a comprehensive and enforceable restraint of trade provision.

TIP

Tip: To protect the goodwill of the rent roll business, make sure your sale contract has a comprehensive and enforceable restraint of trade clause.

