

DATES IN MANAGEMENT RIGHTS AGREEMENTS – HAVE YOU SET YOUR REMINDERS?

Managers of management rights businesses have lots to do daily, weekly and monthly, not to mention all the additional requirements the past few years has brought about, so it's easy to see how managers could overlook the key dates in their agreements.

We are here to remind you, that it is time to grab your agreements and check all your key date and set some reminders.

Key Date 1: remuneration reviews

Some body corporate managers will automatically review a caretaker's remuneration at the time stated in the agreement. Other body corporate managers will not.

Managers seeking to ensure their remuneration is properly increased in accordance with their agreement should diarise the review date and ensure the review occurs as agreed.

Bodies corporate cannot refuse to comply with remuneration review clauses – even where CPI has increased to a level not seen before.

Key Date 2: Options

'Options' are so-called because they give managers the option (choice) to extend the term of their agreement – if they wish to do so.

The length of an option is set out in the agreement. Five or 10 years is common, but it could be for a shorter period. It is rare for an agreement to automatically extend. This means that managers wanting to exercise (take up) an option must notify the body corporate of their intention to do so.

Agreements usually specify a timeframe during which an option must be exercised. They also generally set out a procedure that must be strictly followed.

Not exercising an option properly has **serious** consequences. The agreement automatically ends and managers lose their right to conduct the management rights business from the complex. Not exercising an option may also put managers in breach of their finance arrangements.

Buying a management rights business is a significant investment for most people. Losing the business because an option is not exercised or is not exercised properly is a significant risk that must be managed.

Fortunately, this risk can be easily managed by doing these four things:

- H:** Have a look at the dates in your agreement – this includes the *earliest* and *latest* dates by which the option can be exercised;
- I:** Include those dates in your diary, and if you like, get another person to double check your dates before including them;
- N:** Note a couple of reminders in advance of the option dates so you know the time for exercising the option is approaching; and
- T:** Technology can assist keeping your important dates, even where you change devices.

Bodies corporate are not required to give managers new agreements if managers forget to exercise options or fail to exercise them properly. The fact that a manager may have had other priorities, may be of no assistance.

Managers who find themselves in this situation and have a good relationship with their body corporate committee may be able to negotiate a new agreement. However, real issues arise when the manager and the committee are not getting along.



Key Date 3: “Top Up”

A ‘top-up’ is a colloquial term used in the management rights industry. When an agreement is topped up it is varied to include a clause giving the manager a **further** option for a specified period of time. There are specific limitations on how long the additional option term can be. The further option clause is usually worded the same as any previous option clauses in the agreement for consistency.

Some managers think that topping up an agreement and exercising an option are the same thing. They are not. Top-ups do not extend agreements. They merely give managers another option (choice) to extend their agreement if they wish to do so. Managers wanting to extend their agreements still need to notify the body corporate of their intention to exercise the further option – and follow the rules about how it is to be exercised.

Exercising these further options is not straightforward. The original agreement may have only had a simple requirement to exercise an option before the expiry date, but it is becoming increasingly common for bodies corporate to require further top-up options to be exercised within a specific timeframe – ordinarily between three to six months before the term expires.

Sometimes the body corporate may request this requirement also apply to any option terms not already exercised. While a manager does not have to agree to this, they may consider it prudent to do so, as the dates clearly set out in the agreement mean there can be no argument about when the option is to be exercised.

The procedure specified in the further option clause (and any changes to a prior option clause) is as important as ever and must be strictly followed. The method to notify the body corporate is usually

very prescriptive. Notice by email may not be enough.

Key Date 4: Expiry Date

The other important date is the date when the agreements expire. This date is particularly important for managers looking to sell. Buyers and their financiers want to see that agreements have as long as possible to run – depending on which module the scheme falls in. This is why top-ups are so common.

HOW CAN QUARTZ LEGAL QLD HELP?

If you have any questions about management rights or you just want to confirm you’ve correctly calculated your option exercise dates, please reach out to us at info@quartzlegal.com.au

