

# Managing Agents

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# The Role of the Managing Agent

A decision to appoint a managing agent can be taken by:

1. the trustees; or
2. the members; or
3. a registered mortgagee holding 25% (in number) of the primary sections.

# The Role of the Managing Agent

- ❑ Regardless of the authorising party's identity (whether it was the trustees or members who authorised it), it is important to remember that the contract between the managing agent and the body corporate can only be valid if it is signed on the authority of a trustee resolution by two trustees.
- ❑ So, if the members passed an ordinary resolution authorising the appointment, the trustees must still pass a trustee resolution stating that the trustees have resolved to enter into the particular agreement in accordance with the ordinary resolution passed on the specified date, and that they further authorise the two trustees (who should be clearly identified) to enter into the contract with the particular managing agency.

# The Role of the Managing Agent

- ❑ It is important to note that the trustees may only pay the appointed managing agent if such payment is in accordance with the **scheme's budget** as approved by the members in a general meeting.
- ❑ So, if the members did not approve a budget which provides for the payment of a managing agent, the agent **cannot be paid** (even if their appointment was duly authorised by the trustees). It is therefore important to remember to not only obtain the authorisation to appoint a managing agent, but also to pay that managing agent.

# The Role of the Managing Agent

## ❑ CAN THE MANAGING AGENT TALK AT THE AGM?

PMR 15(5) = A Managing Agent may speak, but is **not permitted to vote**, **HOWEVER**, if members decide that the Managing Agent will unreasonably interfere at the AGM, then the Managing Agent is not entitled to attend that part of the AGM where a specific matter will be discussed.

Remember: The Managing Agent will be advised by the board of trustees if there are certain agenda items they will need to speak on, such as budgets and financial reports.

## Can the Managing Agent chair the AGM?

**Yes**, if the Chairman cannot or will not act, and the members elect him/her as Chairman.

# Appointing and Terminating the MA Agreement

- By ordinary resolution (51%) of owners can instruct the trustees to appoint a Managing Agent
- By special resolution, the members can cancel a Managing Agent's contract, but then the MA must be given 2 months' notice
- The trustees or the members can, by ordinary resolution, refuse to renew the MA's contract if it is due to expire.

## ❑ CSOS Adjudication order:

### **39(5) In respect of management services—**

- (b) an order declaring that the association does or does not
  - have the right to terminate the appointment of a managing agent, and that the appointment is or is not terminated.

# The Role of the Managing Agent

- The Applicant submitted that a written and signed Management Agreement was concluded between the parties on the 5th of March 2018 in term of which the Applicant would provide management services to the Respondent for a fixed term period of 36 (Thirty-Six months) from inception of the contract.
- It is common cause that the issue in dispute between the parties is that of a contractual dispute and the validity of the termination of the contract, since the Respondent's letter of cancellation to the Applicant on 27 March 2019;
- The Applicant rejected such cancellation stating that the term of the Contract was for a period of 36 (Thirty-Six) months. The Respondent has since had to continue to endure the Applicant's neglect in its duties as Managing Agent, breaching the terms of the Contract;

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- ❑ In terms of clause 7.1 of the Contract, the parties shall be entitled to terminate the Contract by giving 3 (three) calendar months written notice of termination prior to the anniversary date of the Contract.
- ❑ The Applicant asks the Adjudicator to declare that the Respondent did not have a right to terminate the appointment of the Applicant on the the 27<sup>th</sup> of March 2019 in terms of the management contract entered into between the parties on the 5th of March 2018.
- The Respondent is adamant that it did have the right to do so, but in the event that it did not, then in terms of clause 7.1 of the Contract, it was entitled to terminate the Contract by giving 3 (three) calendar months written notice of termination prior to the anniversary date of the Contract.

The Applicant's appointment as Managing Agent was not validly and lawfully terminated by the Respondent on the 27 March 2019.



## Matters brought against MA at the CSOS

**❑ REMEMBER:** A member of a Scheme, a Trustee or any other party CANNOT lodge a complaint against a MA (as Respondent) and not cite the BC, Trustees etc..

The Adjudicator will not grant the relief!!

# Matters brought against MA at the CSOS

- A Managing Agent can bring an application to CSOS on behalf of the Trustees **PROVIDED** there is a resolution signed authorizing this!!! (2 trustees...)
- The Managing Agent is then duly authorised to represent the Scheme Executives.....
- Remember to add the applicable fee to your agreement...

# The Role of the Managing Agent

- ❑ A good property manager or management company will ensure that the association has the proper insurance policies in place, hires cleaners, gardeners and other workmen, in order to ensure that the property is properly maintained, and to ensure that common areas, such as pools and driveways, are maintained to a standard that supports the value of the individual properties.

# The Role of the Managing Agent

## ❑ What can you do when your client transgresses the law?

1. Place everything in writing to cover yourself!
2. If it really gets bad and the Trustees are acting unlawfully, send a letter out to all owners explaining the situation.

**OBVIOUSLY, THIS IS GOING TO CAUSE THE TRUSTEES TO BECOME VERY CROSS,**

then:

- Get hold of an owner/owners who you know will abide by the law and advise him/her what is going on, and what the Trustees are up to, get the support of owners holding 25% of the total PQ and petition the trustees to call a general meeting in terms PMR 17(4) within 14 days – you and your fellow members determine the agenda. Ask your fellow-members to declare a vote of no confidence in the Trustees, and then vote in new Trustees.

An isometric illustration of a city scene. It features several buildings of varying heights, some with windows. There are trees and a person walking under an umbrella. The scene is rendered in a light green and white color scheme. The text is overlaid on the left side of the image.

**THANK YOU**

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