

## **MFS : TIME TO TAKE STOCK**

The recent suspension of MFS from the stock market should raise alarm for the Body Corporate industry.

It was reported in the news this week that MFS is to sell its Management Rights business for a figure 40% lower than it was valued at last month.

This is clear evidence that the dizzy heights that had been reached in the valuation of management rights businesses are not sustainable. The owners of the real estate upon which the entire industry is founded have been "taken for a ride" with many owners experiencing less than 2% return on their investment. It is quite common in the industry for Management Rights businesses to take over 60% of the income generated by each owners real estate.

Management Rights businesses enjoy a protected position under the Body Corporate and Community Management Act 1997 ("BCCM Act") which leaves Bodies Corporate hogtied to 10 or 25 year agreements, from which they are unable to escape.

With the sale of the MFS business all bodies corporate, which are subject to Management Rights Agreements with MFS, should seek advice about their rights and their ability to have some control about the proposed purchaser of the management rights.

Most Management Rights Agreements provide that where there has been a change in effective control of the caretaker/letting agent that an assignment of the agreements is deemed to have occurred.

If a bodies corporate's management rights agreements provides for a deemed assignment upon the change in effective control, MFS will be required to seek the consent of the Body Corporate prior to the sale or transfer of its Management Rights, otherwise it will be in breach of the agreements, which may entitle a body corporate to terminate.

Management Rights agreements usually contain provisions about the process for assignment and the matters about which a body corporate is entitled to be satisfied before it is required to give its consent. The relevant regulation module also contains a list of matters, which a body corporate is entitled to consider prior to giving its consent.

Many disputes with managers can be avoided or reduced by Bodies Corporate undertaking a proper and thorough due diligence of any prospective assignee and saying NO to assignees that do not have the relevant experience and qualifications or who are not of suitable character.

The BCCM Act provides that a Manager must pay for a Body Corporate's legal representation in the event of an assignment. So there is no excuse for a Body Corporate not obtaining relevant advice.

If you own a unit in a building managed by MFS you should seek immediate legal advice about your rights.

Robert Herd is the Principal of Herdlaw Solicitors. Herdlaw Solicitors are the body corporate lawyers who as a major sponsor of the Unit Owners Association of Queensland (UOAQ) specialise in representing the rights and interests of bodies corporate and lot owners exclusively. We have extensive experience in all aspects of body corporate law, including levy collections, assignments of management rights, dispute resolution applications, establishment and amalgamation of schemes, and general advice to lot owners.

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