

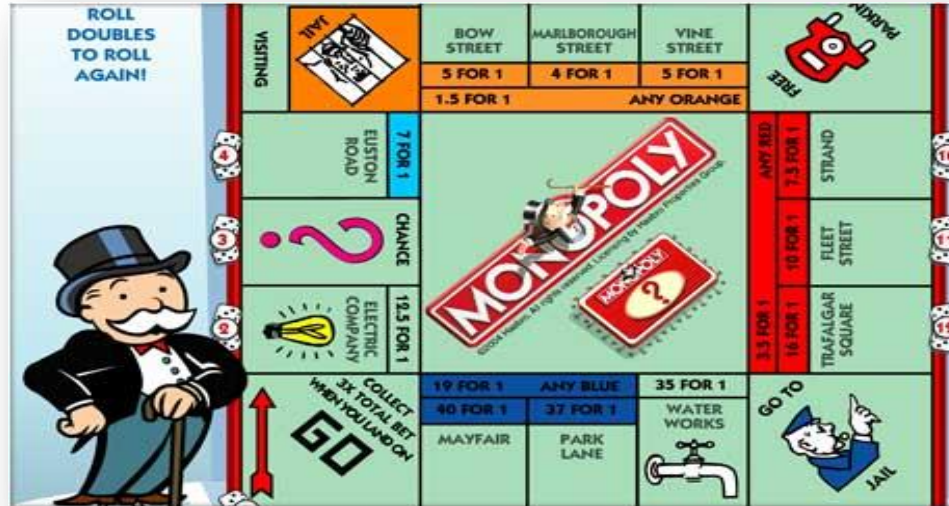
Trading Within Your Strata Management Agency Agreement

Presenter: Bruce Bentley | Partner



Monopoly...

you can't play to win if you don't know the rules



Strata Management...

you can't play to win if you don't know the rules



Where do you find the rules?



You find the rules in

1. Your Management Agency Agreement
2. The Legislation
3. The Common Law

What is your Management Agency Agreement?

- A contract



What is a contract?

- A set of promises which the law will enforce.



What are the elements of a contract?

- a) An offer by one party accepted by the other;
- b) Intention to create legal relations;
- c) Valuable consideration from both parties;
- d) Legal capacity of the parties to act;
- e) Genuine consent by the parties;
- f) Legality of the objects of the agreement.

A typical Management Agency Agreement?

- REINSW Exclusive
Management Agency Agreement

REINSW
Real Estate Institute of New South Wales

EXCLUSIVE MANAGEMENT AGENCY AGREEMENT
(OWNERS CORPORATION)
This Property, Street, Town, Suburb, State and Postcode is the subject of a written agreement.

PARTIES

Principal
The Owner - Strata Plan No. _____
Address (Building) _____
GST Registered ☐ Yes ☐ No ABN / ACN _____

Agent
Licence No. _____ (see note)
GST Registered ☐ Yes ☐ No ABN / ACN _____
Trading as _____
Address _____
Phone Work _____ Mobile _____
Fax _____ Email _____
Note: If the Agent trades as a corporation the Bureau Number (provide to the corporation's Bureau Number)

AGREEMENT

Agent's Appointment

- The Principal appoints the Agent to act as the Sole Managing Agent of the strata scheme and delegates to the Agent the powers, functions and obligations of a Sole Managing Agent, subject to the conditions and covenants set out in this Agreement, to perform the services under this Agreement.
- The Agent accepts that the agent is licensed as a Sole Managing Agent under the Property, Strata and Business Agents Act 2010 and that it will comply with the provisions of the Act.
- The Agent agrees to provide the Principal with the services set out in the Agent's terms of service and to be bound by the terms of the agreement.

Term

4.1 This agreement commences on _____ and _____
4.2 unless terminated or either party giving not less than _____ written notice of termination. ☐ Yes ☐ No
OR
4.3 until the close of the next Annual General Meeting of the Principal. ☐ Yes ☐ No
OR
4.4 for a term of _____ ☐ Yes ☐ No. At the expiration of this term, the agreement may continue for a further term of _____ ☐ Yes ☐ No. If this further term is more than 3 months, the Principal may terminate the agreement by giving 3 months notice within that further term. If the Principal terminates the agreement in this manner, the Principal shall not be subject to any penalty.

Termination

5.1 This agreement will be terminated upon the expiration of a 12 month term, unless the Principal exercises its right to terminate this agreement in accordance with the provisions of the Property, Strata and Business Agents Act 2010, where such agent is authorised to exercise or perform all of the functions of the relevant corporation. The agent is not entitled to any remuneration in any of the circumstances or otherwise in respect of any period after the termination in those circumstances, nor is the agent entitled to any payment as a result of the early termination of the agreement.

Agent's Remuneration

6.1 For the performance of the services set out in Schedule 1 to this agreement, during business hours (from 9am Monday to Friday) the Principal shall pay the agent a management fee of _____ ☐ Yes ☐ No
GST Inclusive _____ per month and payable on the first day of each month. ☐ Yes ☐ No
OR the last day of each month. ☐ Yes ☐ No

6.2 Where the term in Clause 4 is continuing, or is equal to, or greater than 12 months, the Agent shall conduct, once per calendar year, an annual general meeting of the Principal, commencing at a time chosen by the Agent and limited to one hour's duration (between 9am to 5pm, Monday to Friday), at a venue chosen by the Agent.

6.3 The management fee and any other remuneration payable under the agreement may be included in any levy by agreement between the Agent and the Principal. The management fee and/or other remuneration as agreed with the Principal shall be payable to the Principal of Class 4 and 5 respectively.

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Step 1

The Management Agency Agreement:

1. Make sure it is compliant with relevant legislation.
2. Make sure it is appropriate to the other contracting entity.
3. Make sure the named agent is a licensed entity.
4. Fill out all the blanks.
5. Ensure that the delegated duties cover the services which you will provide.
6. Ensure that additional services and the fees to be charged for those services are clearly set out in the agreement.

Step 2

Entering the Agreement:

1. Ensure the other party properly authorized entry into the agreement.
2. The agreement must be properly executed by all parties.
3. The agreement must be dated.
4. Deliver a copy of the agency agreement signed by you to the other party within 48 hours.

Step 3

Performing the Agreement:

1. Know your Agreement.
2. Act within the scope of your authority.
3. Act within the terms of the Agreement.
4. Act within the letter of the law.

Where do you find the legislation?



Australian Legal
Information Institute
austlii.edu.au



New South Wales Government
[NSW legislation](http://legislation.nsw.gov.au)

NSW Government
legislation.nsw.gov.au

Keep these on your web favourites.

Principal Management Legislation

- Property Stock and Business Agents Act 2002 and Regulation 2003
- Strata Schemes Management Act 1996 and Regulation 2010
- Strata Schemes (Freehold Development) Act 1973 and Regulation 2012
- Strata Schemes (Leasehold Development) Act 1986 and Regulation 2012
- Community Land Management Act 1989 and Regulation 2007
- Community Land Development Act 1989 and Regulation 2007
- Corporations Act 2001 and Rules 2000
- Conveyancing Act 1919

Principal Management Legislation

The Principal Management sections of the SSMA are contained in chapter 2 part 4 of the act.

PART 4: OTHERS INVOLVED IN MANAGEMENT-STRATA MANAGING AGENTS

Division 1 - Appointment of Strata Managing Agent

- 26. What is a strata managing agent?
- 27. How is a strata managing agent appointed?

Principal Management Legislation

Division 2 – Functions of Strata Managing Agent

- 28. What functions of an owners corporation can a strata managing agent exercise?
- 29. Can a strata managing agent exercise the functions of the chairperson, secretary and treasurer or the executive committee?
- 29A. Functions that may only be delegated to member of executive committee or strata managing agent
- 30. Breach of duty by strata managing agent
- 31. Strata managing agent to record exercise of functions
- 32. Exercise of functions of strata managing agent appointed by an Adjudicator

Principal Management Legislation

Division 3 – Accountability of Strata Managing Agent

- 33. Information may be required relating to strata managing agent's trust account
- 34. Information may be required relating to other accounts of the strata managing agent
- 35. Information may be required relating to money received by the strata managing agent from the owners corporation
- 36. Information may be required relating to transactions entered into by a strata managing agent for an owners corporation
- 37. Procedure for requiring information from strata managing agent
- 38. Who is responsible for providing information if a strata managing agent ceases to hold a licence or dies?
- 39. Exemption for information relating to certain transactions
- 40. Certain provisions of other Acts requiring agents to provide information not to apply to affairs of owners corporation

Principal Management Legislation

Division 5 – Managing Agents

The principal management sections of the CLMA are contained in part 2 division 5 of the act.

- 50. Appointment of, and delegation to, managing agent
- 51. Provision of information by managing agent
- 52. Liability of managing agent under delegated duty

Property Stock Business Agents Act (PSBAA)

The PSBAA Governs:

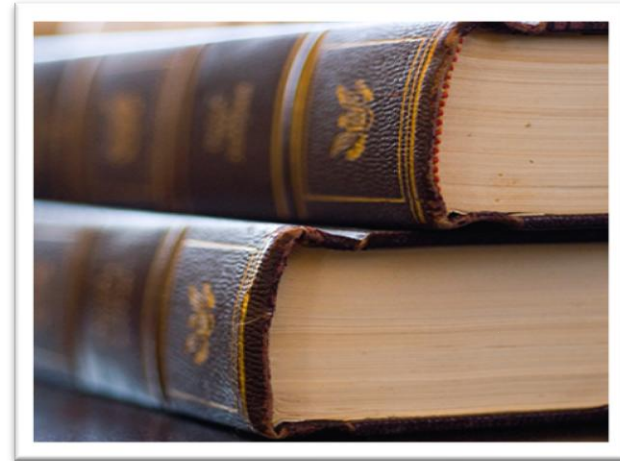
- Licensing - Part 2
- Conduct – Part 3
- Agreements – Section 55 & Regulations
- Commissions – Sections 55 & 55A
- Trust accounts – Part 7
- Records – Part 8
- Complaints and disciplinary action – Part 12
- Offences – Part 13

Other Commonly Relevant NSW Legislation

- Access to Neighbouring Land Act 2000
- Anti-Discrimination Act 1977
- Associations Incorporation Act 2009
- Building and Construction Industry Security of Payment Act 1999
- Building Professionals Act 2005
- Civil and Administrative Tribunal Act 2013
- Civil Liability Act 2002
- Contracts Review Act 1998

Other Commonly Relevant NSW Legislation

- Crimes Act 1900
- Defamation Act 2005
- Dividing Fences Act 1991
- Environmental Planning and Assessment Act 1979
- Evidence Act 1995
- Fair Trading Act 1987
- Home Building Act 1989
- Interpretation Act 1987
- Landlord and Tenant (Amendment) Act 1948



Other Commonly Relevant NSW Legislation

- Law Reform (Miscellaneous Provisions) Act 1946
- Legal Profession Act 2004
- Limitation Act 1969
- Privacy and Personal Information Protection Act 1998
- Real Property Act 1900
- Retirement Villages Act 1999
- Swimming Pools Act 1992
- Trees (Disputes Between Neighbours) Act 2006
- Work Health and Safety Act 2011

Other Relevant Documents

Make sure you know and have copies of any relevant:

- Registered Plans
- By-Laws
- Strata Management Statements
- Development Contracts
- Building Management Statements
- Community Management Statements
- Precinct Management Statements
- Neighbourhood Management Statements
- Constitutions

Common Law Duties

Common law duties of an agent:

- Follow the principal's instructions
- Act in person
- Act in good faith
- Make full disclosure of any personal interest
- Not to make a secret profit
- Exercise reasonable care and skill



Common Law Duties

Ancillary common law duties of an agent:

1. To take such care of the principal's property as a reasonably prudent person would take in dealing with their own.
2. To keep all the principal's moneys and property separate from their own.
3. To keep separate accounts of all dealings on the principal's behalf.
4. To preserve confidentiality in all matters coming to the agent's knowledge while acting as agent for the principal.

Step 4

The End Game...

1. Enter a new agreement at the end of the existing term.
2. Enter a new agreement after a s162 appointment expires.
3. Exercise any right to terminate in strict accordance with the Agreement.
4. Go gracefully.



Case Studies

- Interactive hypothetical case studies.



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THANK YOU

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