

Managing agent contract termination – notice confusion

Posted In: Paddocks Press Newsletter |27/01/2016 | 0



Sectional title schemes **terminate their managing agent contracts from time to time**, for various reasons: more competitive pricing for services by another agent, dissatisfaction with the service delivery or a decision to self-manage the scheme. The body corporate must give notice to the managing agent. There are actually two notification requirements and this is where confusion can arise.

Prescribed management rule (PMR) 46 says that the contract with the managing agent initially runs for one year and shall then **automatically be renewed from year to year unless the body corporate notifies the managing agent to the contrary**. As with any

contract, the managing agent contract should have a termination notice period as one of its terms. If it does not, reasonable notice of termination must be given, and that would vary depending on the circumstances. It's easiest to explain how these two notice requirements work together by using an example.

Let's say the managing agent was appointed on 1 June in terms of a written contract that has a two month notice period. When it comes time for the body corporate to change agents, it must give two months' notice. But what about the automatic year by year renewal provision of PMR 46(1)(a)?

There are three possibilities:

1. The two month notice is given on 1 April, two months before the contract's anniversary date. In this case, both notice requirements coincide and the contract terminates on 31 May.
2. The two month notice is given on 1 January, five months before the contract's anniversary date. In this case the contract will not terminate on 28 February as one might expect from the contractual two month notice period. The contract will still terminate on 31 May because of the legislated requirement that the contract runs from year to year.
3. The two month notice is given on 1 May, one month before the contract's anniversary date. The contract would then terminate on 30 June, one month into the new "year by year" period and not at the end because the body corporate notified the managing agent of termination before the anniversary date. The contractual two month notice period runs its course and the contract terminates at the end.

Trustees – and the owners because, acting as the body corporate, they could instruct the trustees to terminate the managing agent contract – need to understand when to give notice to avoid an excessive, unintended notice period.

Article reference: Paddocks Press: Volume 11, Issue 01, Page 2.

Anton Kelly is an extremely knowledgeable specialist Sectional Title and HOA teacher and consultant. Having been the lead teacher on all the Paddocks courses for the last 5 years, Anton lives and breathes Sectional Title and HOA law, all day every day. There are not many issues he hasn't come across before.

This article is published under the **Creative Commons Attribution** license.

Back to Paddocks Press – January 2016 Edition.