



PURCHASING A *RENT ROLL*

INFORMATION

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Purchasing a Rent Roll is undoubtedly an effective and viable way for any real estate agency to expand and grow their business. A Rent Roll not only carries an intrinsically high value; but it is an asset that represents the most consistent form of income any real estate agency can have.

For most, the prospect of purchasing a Rent Roll is both an exciting opportunity and a significant business decision that requires careful consideration. Potential purchasers need to ensure they understand exactly where the value of the Rent Roll lies and how to negotiate the terms of the purchase contract to keep that value protected post-purchase and to further prevent any issues arising later down the track.

Below we set out some key points for agents to be aware of when considering the purchase of a Rent Roll and further, when negotiating the terms of the agreement on which that purchase may be effected.

DUE DILIGENCE

Purchasers need to ensure the agreement to purchase is not only conditional on the purchaser completing its due diligence, but that it also provides adequate time to complete the due diligence required for such an acquisition. Purchasers should ensure they pay careful consideration to the property management files, the property management authorities, the trust account ledgers and the employment agreements with current property managers, to name a few.

***ENGAGING THE RIGHT
LAWYERS WHO
UNDERSTAND THE REAL
ESTATE INDUSTRY TO
ASSIST IN THE DUE
DILIGENCE, CAN BE
AN INVALUABLE STEP
FOR ANY PURCHASER
CONSIDERING ACQUIRING
A RENT ROLL.***

Not only will the right lawyers advise on what to look out for when completing due diligence, but will also negotiate the agreement to purchase to ensure complete and full disclosure during due diligence. Further, the right lawyers will ensure the purchasers ability to terminate the agreement is secured, in the case that they are unhappy with the outcome of the due diligence.

ASSIGNMENT

Prospective purchasers need to ensure that the authority to manage each property in the Rent Roll is transferred to the purchase efficiently upon settlement. The efficiency of the transfer depends on the assignment provisions in the agreement to purchase and the authorities. Without an assignment provision, each property owner will be required to sign a brand-new authority with the purchaser - it goes without saying that this can be a costly and time-consuming task that is best avoided, where possible.

THE ASSIGNMENT PROVISIONS SHOULD CONSIST OF A CAREFULLY PLANNED PROCEDURE FOR THE HANDOVER AND TRANSFER OF PROPERTY MANAGEMENT.

Further, they should hold the seller responsible for introducing the purchaser to the property owners in a favourable manner that encourages the transfer of the authority. In any acquisition of Rent Roll there will inevitably be some property owners who do not wish to transfer property management to the purchaser. Ensuring the seller introduces the purchaser in a positive light is essential to minimising the fall out of property owners as a result of the purchase.

Once introduced, it is also important for the seller to be required to provide the purchaser with written notice of each and every property owner who authorises the transfer of property management.



RETENTION

Experienced lawyers will know the value of including a retention provision in the agreement for purchase of a rent roll. As mentioned above, the acquisition of any Rent Roll will inevitably result in some property owners not transferring property management to the purchaser. In that case, it is essential that that property does not form part of the purchase price, which will have already been calculated to include that property.

A RETENTION PROVISION PROVIDES FOR PART OF THE PURCHASE PRICE TO BE PAID TO A RETENTION STAKEHOLDER.

Those funds are held by the retention stakeholder for a period of time, usually three to six months. If any property owners remove themselves from forming part of the Rent Roll during that time, the purchase price paid for that property is returned to the purchaser from those retained funds.

RESTRAINT OF TRADE

Restraint of trade provisions, if drafted appropriately, can protect purchasers of a Rent Roll against the seller, its directors or even any disgruntled or previous employees from poaching property owners from the Rent Roll. Unfortunately, poaching is a common occurrence we see among many of the real estate agents we act for at M A Legal and in the wider context of the real estate industry generally.

Enforcement of restraint provisions can however be difficult as the courts generally prefer not to prevent a person from being able to perform their role. However, correctly drafted restraint of trade provisions are enforceable.

In any case, the right lawyers will ensure that both the directors of the selling company as well as where possible the seller's key employees sign the similar restraint of trade deeds to protect the purchaser.

PURCHASERS NEED TO BE AWARE THAT IN ANY AGREEMENT TO PURCHASE A RENT ROLL, IT IS THE COMPANY WHO IS THE SELLER; NOT THE NOT THE DIRECTORS THEMSELVES OR THE KEY EMPLOYEES OF THE COMPANY.

Restraints, therefore, need to be against the individuals and signed by the individuals.

Finally, any agreement should include an agreed liquidated damages provision, given the difficulty in putting a monetary value on a breach of restraint of trade. An agreed liquidated damages provision provides the method by which the damages relating to any breach of the restraint of trade is to be calculated. Not only does an agreed liquidated damages provision save time, money and the need to prove the damages in the case of a breach; but it also provides transparency to all parties to the agreement to purchase prior to signing and prior to any breach.

EMPLOYEES

Whether or not the seller's property managers should remain employees of the business post-settlement is ideally the decision of the purchaser. If the purchasers are considering keeping the employees, they need to keep in mind that the obligations of the employer in terms of remuneration and entitlements will transfer to them upon settlement and the cost of each transferring employee will be adjusted at settlement.

This means that the purchaser becomes responsible for any future claim by the transferring employee in relation to underpayment or miscalculated entitlements or remuneration; even if the underpayment or miscalculation occurred prior to settlement.

For that reason, the purchasers need to ensure the agreement contains sufficient cross-indemnity clauses for both the purchaser and the seller in relation to remuneration and entitlements of each transferring employee. These clauses ensure that any underpayment or miscalculation, whether pre or post-settlement, is paid for by the right party to the agreement to purchase the Rent Roll.



SELLER WARRANTIES

Purchasers should ensure the Agreement requires the seller to provide adequate warranties as to the business of the Rent Roll and that it holds the seller accountable to those warranties. Purchasers should look out for warranties relating to full disclosure, accurate information, the businesses assets, its accounts, compliance with the relevant Real Estate Agents legislation and the property management records, for example. This provides security for the purchaser as to the affairs of the business.

***FOR ADDED SECURITY,
PURCHASERS SHOULD ALSO
ENSURE THE SELLER AND ITS
DIRECTORS ARE BOUND TO
THESE WARRANTIES FOR SOME
TIME AFTER SETTLEMENT.***

Adding an indemnity provision, which essentially holds the seller liable to the purchaser for any loss or damages arising out of the breach of any of the seller's warranties, is also essential for asset protection. This is a good demonstration of how the right lawyers, with real estate experience, will include these provisions that can provide protection and save invaluable time, money and energy down the track.



The above are just some key aspects of acquiring a Rent Roll that prospective purchasers need to be aware of, and engaging the right commercial lawyers with first-hand real estate industry knowledge and experience to assist in the acquisition is a vital step to ensure those key aspects, and more, are addressed comprehensively.

Rex Afrasiabi, the founder and one of the Principals of M A Legal is well known in the real estate industry, having extensive experience in assisting real estate agents with all aspects of their business. He and M A Legal represent national agencies, franchisors, franchisees, independent offices and individuals. Rex's experience in the real estate industry is recognised by the REB, having selected him as a judge for the prestigious REB awards.

M A Legal is always available for a free, no-obligation and confidential discussion with any real estate agents, agencies or prospective purchasers. We understand that purchasing a Rent Roll can be an enjoyable, exciting and motivating time for any agent or agency, and we are dedicated to taking the pressure off any prospective purchaser by providing detailed, careful, efficient and thorough professional legal advice and assistance along the way.

The content of this article is intended to provide a general guide to the subject matter.

Specialist advice should be sought about your specific circumstances.



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