

Finance Options. Decision, decisions, decisions .



I suspect most accommodation industry professionals and operators will already have some knowledge of the recent QCAT decision relating to this management rights. My take on things is that there is a lot of rumour and misinformation out there at present and it might not hurt to take a step back and consider the situation more broadly. Lets start with a bit of history. Back in the day banks lent on management rights and secured their position via an agreement with the body corporate known as a deed of consent and right of entry. This document often proved a tricky beast as all the lenders had a slightly different version and many body corporate lawyers had a view of what was fair and reasonable. To no great surprise there was often disagreement between the parties in respect of the content of the document. The Queensland state government made amendments to the Body Corporate and Community Management Act in 2003 and in that process inserted a new provision known as Section 126. The intent of the legislators was to do away with the need for deeds of consent and instead incorporate the rights and responsibilities of the lender into the act. The banks loved the idea and to this day (well until recently anyway) they prefer lending on management rights in Queensland and will apply higher lending margins because of the certainty they believed they had via the BCCMA.

The Gallery Vie decision has essentially caused the banks to question the assumptions they had previously made in respect of their security positions. It has always been assumed that once a bank appointed receivers the agreements could not be terminated by any actions of a third party. In essence, unless the bank or its representatives did something to trigger termination the lenders recourse was assured. The recent QCAT decision says otherwise and to no great surprise that has spooked the banks.

The outcome thus far is not unexpected. All lenders to the management rights industry in Queensland have, or are in the process of, reviewing the decision and deciding what if any changes they will make to their credit policies. Contrary to popular belief no lender has departed the industry. A number of banks have paused in their lending so they can consider the situation, some are continuing to lend but with additional approval conditions and some have indicated they will proceed on a business as usual basis. So far as we are aware loan approvals that were in place at the time of each bank's review will be honoured albeit some banks have ceased taking applications for the moment. We expect to see some lenders requesting changes to agreements prior to settlement to remove any clauses that may be interpreted as giving a body corporate the power to terminate agreements after a receiver is appointed. This seems reasonable given that the clear intent of the legislation is to protect the banks from post receivership termination and give certainty in respect of lending against management rights agreements.

The good news is that a group of industry lawyers have banded together to assist ARAMA and the banks. I expect the ultimate outcome of this concerted effort will be an amendment to the BCCMA to essentially remove any uncertainty that may have arisen through the Gallery Vie decision. I am also aware of interim measures being proposed by this industry lawyer group and I am hopeful that proposals currently before the banks will gain some rapid traction. As a good friend of mine in the legal fraternity pointed out, if the banks stop lending values will plummet and that means all the lender's current management rights security values as well. With most management rights geared in the 60% to 70% range the banks have more to lose by stopping than any other stakeholder.

Let's not forget that management rights operators are the single largest manager of tourism based accommodation in Queensland. Operators of permanent and short stay corporate rights also make a substantial component of the broader property management industry in Qld. The state legislation has been regarded Australia wide as the most sophisticated law associated with management rights. The banks have held the rights industry in Qld in high regard and a substantial reason for this is the belief that the lenders rights are protected under section 126. Ready access to debt via main stream lenders has underpinned value in the industry and many small business operators have their life savings invested in the industry as a result. I would like to think that this will not be lost on government and the efforts of the industry will gain traction.

In the interim we continue to receive finance proposals and approvals from a range of lenders, just a smaller number to choose from for the moment. I suspect by the time you read this the list may well be longer.

And lastly, at the risk of incurring the wrath of the almighty, let me give the industry legal profession a big wrap. Individuals (you know who you are) have worked tirelessly at ungodly hours (I see the emails) to come up with solutions. The spirit of cooperation has been truly splendid.

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