



Changing Managing Agents

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Changing Managing Agents

- ▶ When a Managing Agent underperforms, it is important to take decisive action to address the problem.
- ▶ Although the transition from one agent to another can be difficult, Management companies should not be afraid to remove an underperforming agent. Staying with a poor agent will just make matters worse in the long run. However, try to have a professional end to the relationship; MC's need the outgoing agent to hand over documents and files to the new agent, and often rely on the outgoing agent to transfer some knowledge.
- ▶ Once the decision to appoint a new agent is made, there are several considerations:

The contract between the Mgt Co and Managing Agent.

1. Is the agent being removed under the breach of contract clause, or for general dissatisfaction with performance? The notice period required may differ depending on these circumstances.
2. If removal is for general underperformance, what is the notice period to terminate the contract?
3. Are there any other clauses in the contract to consider when removing the agent?

Finances

- ▶ When is the accounting year end? **If possible, pick the year end as the end date for the current managing agent.**
- ▶ How will payments be managed during the time between giving the agent notice of termination to the date of termination? This is particularly relevant if the OMC is in a poor cash position. The new managing agent will need some cash in the bank to get a good start, so don't let the outgoing agent run down the bank balances.
- ▶ Once notice is given to terminate the contract, prohibit the outgoing agent from entering into new contracts on behalf of the OMC or initiating any significant projects.
- ▶ Ensure the outgoing managing agent continues to keep accounting and other records, and continues to provide normal service levels up to the end date. This may require some negotiating around the payment of the final fees to the outgoing managing agent.

The Transition

Always check the following:

- ▶ **Legal documents:** Either the OMC's solicitor or Managing Agent should hold title documents and other legal agreements on behalf of the OMC. These include the Management Company Agreement, Agreement for sale of the reversionary interest (vesting agreement), leases, planning and building control certificates etc. The solicitor should advise of a full list of such documents that should be held. If the agent holds them, then they should be handed over to the new agent.
- ▶ **Any drawings of the building,** equipment specifications and maintenance manuals, warranties and guarantees over equipment, etc. These should have been provided by the builder to the first agent. In practice such documents are often lost with the passage of time, so if the outgoing managing agent holds them, they should be handed over.
- ▶ **All contracts** entered into by the Managing Agent on behalf of the OMC. These usually include insurance, lift maintenance contracts, cleaning contracts etc.
- ▶ **All financial books and records of the OMC.** This includes the annual accounts for all prior years, with detailed supporting documents, including service charge allocations, owner statements, cheque and lodgment books, supplier invoices, bank statements etc. If in doubt ask the auditor or an accountant to provide a list of documents they recommend are handed over.
- ▶ **Corporate documents:** All minutes of AGM's and directors meetings, CRO returns, tax returns. A solicitor can advise on a full list of documents.
- ▶ **Insurance claims history** and policy, safety files, original brochures and any health and safety records are often lost with time, but if the outgoing agent has them, then they should be handed over.

The Selection Process

- ▶ There are many agents out there looking for your business. Before inviting tenders, consider the type of agent you want:
- ▶ Do you want a large or small business as your Managing Agent? There are benefits and drawbacks to both: A large company usually has large back office support for the property manager, whereas a small agent lacks this but can compensate with a greater personal service. Ask friends or colleagues for recommendations or search the web. Identify the agents that manage neighbouring apartment developments.
- ▶ Once you have a list of agents that you want to tender, call them and invite them to come on site and meet you. They will probably want to do a site inspection in order to prepare a proposal.
- ▶ Always ask for references from existing clients of the Managing Agents. Speak to the referee directly, and cross check their name to the CRO (www.cro.ie) to confirm that they are a director of the OMC concerned. Ideally the agent should have existing clients located near your development.
- ▶ When assessing prospective Managing Agents, ask lots of questions. Use the best and worst practices sections above to guide your questions. See if they are experienced at managing similar properties. Consider the tenders under at least the following headings.

Assessing Proposals

Transition

- ▶ How will the new agent ensure that all records and files are obtained from the outgoing agent?
- ▶ Ask for a list of the documents that will be transferred between agents.
- ▶ Ask what is the agents policy regarding existing service providers: will they be replaced or continue? How are providers selected?
- ▶ Ask if they have taken on any clients of the prior agent, and how that transition went.
- ▶ Ask for a reference from that client.
- ▶ What communication will be sent to owners regarding the change?

Assessing Proposals

Contract

- Ask for a draft of the proposed contract. Propose any amendments (particularly fees), and ask if they will accept your amendments.
- What is the escalation process to address service level issues?

Assessing Proposals

Fee Structure

- ▶ Does the agent propose a fixed fee covering all services provided? Insist on a contractual clause that the agent cannot charge additional fees or charges without the written agreement of the OMC in advance.
- ▶ Will the agent or property manager receive any fee or benefit of any kind from any other person, with regard to its role as managing agent for the OMC? (E.g. insurance commission, inducements (kickbacks), etc). Add a clause to the contract prohibiting this.