



# CONSUMER GUIDE

## TO THE INSTITUTE'S COPYRIGHT AGENCY AGREEMENT

MARCH 2007

This guide has been developed by ISTM to give consumers a better understanding of the terms and conditions of ISTM's copyright strata management agency agreement (ISTM Agency Agreement).

This publication is not intended as legal advice, nor should it be interpreted as such.

This guide does not include comments with regard to every clause and sub-clause in the ISTM Agency Agreement. It does however make comment on the majority of clauses.

Users of this guide are encouraged to seek their own independent legal advice before they enter into any contract, including the ISTM Agency Agreement with a strata manager member of ISTM.

### Page 1

Here we summarize the key particulars of the ISTM Agency Agreement issues. The information provided here includes:

- Identification of both parties to the ISTM Agency Agreement;
- The term of the ISTM Agency Agreement;
- The commencement and expiry date of the ISTM Agency Agreement;
- The review date for fees and charges and the percentage increase if agreement cannot be reached by the review date;
- The agreed service fee for each year that the ISTM Agency Agreement is to operate;
- Whether or not the ISTM Agency Agreement permits the strata manager to receive certain third party commissions as disclosed in Schedule C1 or C2;
- How often you will be billed for the strata manager's services; and
- How frequently the strata manager will report to your owners corporation on the owners corporation's finances.

### Page 2

We suggest you carefully read the "Important notes for the parties" at the top of this page. The owner who receives back the duly executed owners corporation's copy of the ISTM Agency Agreement will be required to sign this page. The remainder of this page is where both the strata manager and the two owners from the owners corporation execute the agreement.

### Page 3

*Clause 1:* ISTM requires those strata manager members that use the ISTM Agency Agreement to hold Professional Indemnity Insurance cover, initially set at a minimum of \$1 million dollars. ISTM makes no warranty as to the suitability of that policy and encourages the owners corporation to obtain a copy of the policy to enable the owners corporation to review it to ensure that it meets their needs. This amount of cover can be increased by Government Regulation although at present no such requirement exists.

*Clause 2:* This clause needs to be read in conjunction with Schedule(s) A1 and A2, at the back of the ISTM Agency Agreement, because the Schedule(s) document the duties and responsibilities the owners corporation delegates to the strata manager. Please carefully read the sentence at the end of clause 2.1 before you refer to Schedule(s) A1 and A2.

### Page 4

*Clause 3:* This clause describes the fees you will pay to the strata manager and whether or not previously declared commissions will be retained by the strata manager or paid to the owners corporation. It also discloses that mutually agreed variations to services and fees need to be confirmed in writing.

Should the agent agree to pay any such commission to the owners corporation, then individual owners will need to declare this income on their personal taxation returns as personal income.

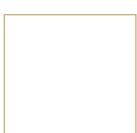
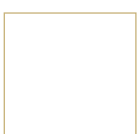
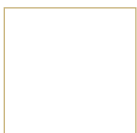
*Clause 4:* If the strata manager and owners corporation cannot agree as to an increase in fees by the fee review date, and the strata manager has not inserted a percentage figure at item 4 on page one, then the formula outlined in clause 4 will be applied to determine the increase in the fees and charges on the review date.

### Page 5

*Clause 5:* Provides a variety of mechanisms to enable an owners corporation to terminate the strata manager's services.

*Clause 5.2* applies if the owners corporation wants to terminate the ISTM Agency Agreement at the expiry of the current term.

*Clause 5.3* applies if an owners corporation wants to terminate the ISTM Agency Agreement after the expiry of the original term.



*Clause 5.5* applies if the owners corporation or the strata manager breach the terms and conditions of the ISTM Agency Agreement.

### **Pages 5 & 6**

*Clause 6:* In this section the owners corporation gives a number of indemnities to the strata manager and in turn the strata manager indemnifies the owners corporation.

If, for example the owners corporation fails to honor its contractual and legal obligations then the owners corporation could incur substantial costs as a consequence of failing to meet its obligations under this ISTM Agency Agreement. The owners corporation and its Executive Committee may be protected by its office bearers liability insurance policy.

The strata manager has warranted under clause 1 that the strata manager will carry professional indemnity insurance policy that may protect the strata manager if they fail to meet their obligations to the owners corporation.

As otherwise recommended in this guide you should obtain copies of the insurance policies that may affect the parties' risks relating to the ISTM Agency Agreement and understand their contents.

### **Page 6**

*Clause 7:* Under this clause the strata manager and owners corporation agree about the role and extent of authority of persons nominated by the owners corporation to have day to day contact with the strata manager.

### **Page 7**

*Clause 8:* This clause covers the procedures that the strata manager can follow if they want to transfer the agreement to another strata manager after the consent of the owners corporation has been obtained.

### **Page 8**

*Clause 11:* This clause clarifies the owner's corporation's responsibilities to ensure compliance with OH&S and other laws that deal with the safety of persons living within or visiting the owners corporation property. It also makes it clear that, for the purposes of compliance with these things the owners corporation is the person in control of the premises and owners corporation property and not the strata manager.

*Clause 11.2 (d)* specifies that even though the premises and owners corporation property are wholly or partly residential that the owners corporation property may, nevertheless be a place of work and therefore the owners corporation must comply with the provisions of the OH&S laws.

*Clause 11.4* recognises that where work is to be undertaken at the owners corporation property or premises that the strata manager is not appointed, under this agreement as Principal Contractor as defined in the OH&S laws.

Clause 11 has been introduced at the suggestion of ISTM legal advisers mindful of the increased complexity of risk management related legislation. The ISTM Agency Agreement now makes it clear that the owners

corporation and not the strata manager must ensure compliance with the relevant legislation and that the owners corporation accepts liability for not doing so.

### **Schedule A1**

Although ISTM does not claim copyright for the schedules in the ISTM Agency Agreement, the strata manager CANNOT modify the items listed in Schedule A1 under the heading "Duties and Functions" as these are prescribed by the Property Stock and Business Agents Act (Section 6, clause 6) to be covered in all agreements.

Schedule A1 is designed so that the owners corporation and strata manager can negotiate the extent to which the strata manager will be able to exercise each of the functions that the owners corporation delegates to the strata manager under the ISTM Agency Agreement.

Note: Some strata managers may not be willing to negotiate the extent of the delegation, unless you are prepared to increase the fee that you pay to the strata manager since it is a non-standard service that may require alternative systems to be put into place specifically for your owners corporation.

### **Schedule A2**

This Schedule lists services that they will undertake for the owners corporation, the extent to which the delegated function may be performed and what authorities may apply to each function.

### **Schedule B**

This schedule lists the fees and charges that the owners corporation will pay to the strata manager when the strata manager undertakes the non standard services listed in Schedule A2.

### **Schedules C1 and C2**

This schedule includes the strata manager's disclosures of the source, manner of calculation and/or amount of any rebates or commissions the strata manager may receive from third parties engaged by the strata manager on behalf of the owners corporation. This schedule relates to clauses 3.4 and 3.5 in the ISTM Agency Agreement.

### **Schedule D**

This Schedule includes the strata manager's disclosures about disbursements and ancillary amounts the strata manager will charge the owners corporation for tasks that the strata manager undertakes.

### **Summary**

ISTM hopes that you find this consumer guide useful to better understand the ISTM Agency Agreement. However, you are reminded that whilst this guide is an attempt by the ISTM to give consumers of strata management services a better understanding of the terms and conditions of the ISTM Agency Agreement and to help you work better with your strata manager, this guide is not intended as legal advice, nor should it be interpreted as such.

Consumers are encouraged to seek their own independent legal advice before they enter into and sign any contract, not just the ISTM Agency Agreement between their owners corporation and the strata manager.