



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Property Rental Schemes) Instrument 2016/870**

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I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 19 September 2016

Stephen Yen

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Property Rental Schemes) Instrument 2016/870*.

### 2 Commencement

This instrument commences at the same time as the commencement of the *ASIC Corporations (Repeal) Instrument 2016/898*.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*property rental scheme* means a managed investment scheme to which all of the following apply:

- (a) the scheme involves owners of interests in real property making their interests available for commercial or residential letting or rental purposes (including day to day management of any lease arrangement);
- (b) the owners have not acquired their interests in real property jointly as a result of participating in the scheme;
- (c) the scheme does not involve a serviced apartment, hotel, motel or resort complex.

*real estate agent* means a person who is licensed to manage real property under the law of a State or Territory in this jurisdiction.

## Part 2—Exemptions

### 5 Relief from scheme registration under Chapter 5C

A real estate agent who operates a property rental scheme does not have to comply with subsection 601ED(5) of the Act in relation to the scheme.

### 6 Relief from licensing requirement

A person who provides a financial service in relation to an interest in a property rental scheme does not have to comply with subsection 911A(1) of the Act to the extent that it requires the person to hold an Australian financial services licence covering the provision of the service.

Note: *ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115* provides relief from subsection 911B(1) of the Act to a person who provides financial services on behalf of a person who does not need an Australian financial services licence because of an exemption under section 926A of the Act.

### 7 Relief from hawking prohibition

An interest in a property rental scheme is exempt from sections 992A and 992AA of the Act.

### 8 Relief from disclosure provisions

An interest in a property rental scheme is exempt from Divisions 2 to 4 of Part 7.9 of the Act.

Note 1: The provision of the relief in sections 5 to 8 should not be taken to imply that the ordinary business of real estate agents in leasing or managing property generally or necessarily involves a managed investment scheme. This will not be the case where, for example, the owner of the property has day to day control through being able to give directions to their agent. The relief is provided for the avoidance of doubt and to provide legal certainty.

Note 2: Conditional relief in relation to arrangements involving a serviced apartment, hotel, motel or resort complex is given by *ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869*.