

Q&S CONVEYANCING UPDATE

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AGENTS BUYING A PROPERTY THEY ARE SELLING

We were recently contacted to advise a real estate agent in relation to a property that had been listed with their real estate agency for quite some time.

The agency's salesperson wanted to buy the property but the agent was uncertain if this was possible, if there were disclosure requirements and if commission, fees and expenses were claimable.

Section 145 of the Property Agents and Motor Dealers Act 2000 ("the Act") states that an agent commits an offence (with penalties up to \$20,000 or 3 years imprisonment) if the agent obtains a beneficial interest in a property listed with the agent (or agency) unless the following applies:-

- (a) the agent obtains the client's written acknowledgment in the approved form before a contract of sale for the property is entered into that the client:-
 - (i) is aware that the agent is interested in obtaining a beneficial interest in the property;
 - (ii) consents to the agent obtaining the interest in the property
- (b) no commission or other reward is payable in relation to the sale
- (b) the client is in substantially as good a position as the client would be if the property were sold at fair market value.

An agent can have a 'beneficial interest' in property in a number of situations, for example when an agent or an associate (i.e. a family member) or an employee of the agency purchases the property or has an option to purchase the property that is listed with the agency.

Agents should therefore be aware that they must complete and sign a PAMD Form 28 before they (or their associates) enter into a contract to purchase a property from their client or they can face severe penalties.

Agents should also note that no commission or other reward is payable by the client in these situations. 'Reward' is defined by the Act to include remuneration of any kind including, for example, any fee, commission or gain.

The Act does not specifically state that expenses are not recoverable and accordingly it appears that agents may be able to recover authorised expenses from the client that have been incurred before the beneficial interest is obtained.

**Richie Muir, Solicitor,
Quinn & Scattini Lawyers**

If you would like to ask any question about this or any other similar issue Richie may be contacted on 3821 2766 between 8.30am to 5pm Monday to Friday.

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our team of experienced lawyers practice in Business Law, Commercial Litigation,
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