

Q&S CONVEYANCING UPDATE

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APPOINTMENT OF AGENT

We were recently contacted by a Seller who was disgruntled with her real estate agent ("the Agent").

Our client had engaged the Agent pursuant to a PAMD Form 22A Appointment of Real Estate Agent ("the Appointment") which was signed by both parties at the home of our client's friends.

Our client had a number of issues with the Agent which included the following:

1. The Agent retained the Appointment and only provided our client with a copy approximately 2 weeks later and only after she had requested it.

The *Property Agents and Motor Dealers Act 2000* ("the Act") states that the Agent must give the client a copy of the Agreement. Although there is no timeframe specified in the Act, we suggest that this is done within a reasonable time (which may depend on the circumstances) and that this is done before any service is performed for the client.

2. The Agent discussed our client's matter (including details of the reserve price) with our client's friends without her permission.

Agents are accountable for their actions and they must comply with the Real Estate Agency Practice Code of Conduct. The Code of Conduct states, amongst other things, that an Agent must act honestly, fairly and professionally in the conduct of a real estate agency practice. It is arguable that the Agent's disclosure of details to our client's friends is unprofessional and accordingly the Agent may have breached the Code of Conduct.

3. Part 4.1.1 of the Appointment stated that the service to be performed by the Agent was "Best Agents Practice".

The Act states that the Appointment must describe the service to be performed by the Agent and how it is to be performed. The term "Best Agents Practice" is not defined and accordingly it is arguable that this may not be sufficient to satisfy the description required by the Act. If this argument was successful then the Appointment would not be binding.

Agents should be aware that oversights such as those above can render an Appointment invalid or at the very least lose out on a sale and commission.

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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