

Q&S CONVEYANCING NEWS

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“STATE YOUR SERVICE”

AGENT GETS NO COMMISSION & COMMITS OFFENCE UNDER
PAMDA BY NOT DESCRIBING SERVICE OFFERED

Another recent matter involved a dispute between the Seller of a property and the appointed Agent.

The Contract was conditional upon the registration of the plan of sub division but this did not occur before the sunset date. The Seller terminated the Contract of Sale but the Agent claimed commission of \$5,720.00 pursuant to the Form 22A Agreement. It transpired that the Agent had not completed the Form 22A correctly because the form did not state how the service was to be performed in accordance with Section 133(3)(a) of the Property Agents Motor Dealers Act 2000 (the “Act”) which states:

“That the appointment must, for each service, state the service to be performed by the Real Estate Agent and how it is to be performed.”

The Form 22A also provided that:

“This form must be completed and given to the Client before the Agent performs any service for the client. Failure to do so may result in a penalty and loss of commission”

The failure to complete the Form 22A meant that the appointment to act was flawed and the Agent was not properly appointed by the Client under Division 2 of the Act as required by Section 140 of the Act.

The Agreement was therefore unlawful and ineffective and accordingly, no commission was payable to the Agent. The Agent also opened themselves up to being charged with an offence that had a maximum penalty of 200 penalty units (i.e., a monetary penalty of \$14,000.00). In addition, there was a possibility of a similar fine for breach of Section 133 of the Act.

Agents should be aware that by not completing a client agreement such as a PAMD Form 22A, that they will not be entitled to commission and that they may be charged with an offence under the Act. The following is a good example of how the description of the “performance of services” should be completed in Part 4.1 of PAMD Form 22A (Version 4):

“Property to be sold by private treaty negotiation as per clause x of the items schedule and clauses x,y,z in the terms and conditions of the attached REIQ schedule.”

Richie Muir, Solicitor

If you would like to ask any question about this or any other similar issue Richie may be contacted on 38212766 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. In addition to residential and commercial Conveyancing services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.



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