



**QUINN &
SCATTINI**

Lawyers

Q & S CONVEYANCING UPDATE

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EXISTING AGENCY APPOINTMENTS

We recently advised an agent of the legal consequences of agents who are appointed by sellers of a property who are under an existing exclusive agency with another agent.

In the current economic climate and with the slow down in property sales, we expect that this scenario will become more commonplace and accordingly disputes may arise between agents.

The Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulations 2001 ("the Code of Conduct") provides a code of conduct for real estate agency practice by setting conduct standards for real estate agents, employed licencees and real estate sales persons, establishing principles of fair trading and providing a system of complaint resolution.

Section 19 of the Code of Conduct deals with the above scenario. It states that:

"(1) Before accepting an appointment to sell property for a client, a real estate agent must take reasonable steps to find out whether the client has already appointed another real estate agent or auctioneer under a sole or exclusive agency for the sale

(2) The real estate agent (the new agent) must not solicit or accept the appointment if:

- (a) The agent knows or should know that the appointment of another real estate agent or an auctioneer (existing agent or auctioneer) for the sale is in force; and*
- (b) The client may have to pay the following if there is a sale:
 - (i) A commission under each appointment,*
 - (ii) Damages for breach of contract under the existing agent or auctioneer's appointment**

(3) However, subsection 2 does not apply if, before the client signs the new agent's appointment, the new agent gives the client a written statement that, if the client appoints the new agent and there is a sale, the client may have to pay the following:

- (a) A commission under each appointment;*
- (b) Damages for breach of contract under the existing agent or auctioneer's appointment."*

A contravention of the Code of Conduct is a ground for the Commissioner to start disciplinarily proceedings, obtaining an injunction or seeking an undertaking under PAMDA.

We therefore suggest that any agent considering entering into an appointment to act with a seller take reasonable steps to find out if there is an existing agent and if so, then provide the seller with a written statement complying with section 19(3) of the Code of Conduct before the seller signs the appointment to act.

Richie Muir, Solicitor, Quinn & Scattini

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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