

CONVEYANCING UPDATE

A Division of McKays Solicitors

For a smooth, hassle free conveyancing solution...

Guarantee payment of your commission

This month we will discuss your entitlement to receive your commission when a contract does not proceed. Next month we will cover payment of commission where there are changes to the contract price.

Your entitlement to commission

Quite often contracts do not proceed to settlement and it is in these situations that disputes can easily arise between the agent and the seller regarding payment of fees, charges and commissions if the terms of appointment of the agent are not clear.

PAMD Form 22a

The PAMD Form 22a Appointment of Real Estate Agent (Sales and Purchases) must state the fees, charges and commission payable for your service. Section 6 of the form sets out the agreed commission and when the commission is payable, however, **it does not provide a section for you to expressly set out in what circumstances you are entitled to receive your commission.**

An instructive case...

In one instance a buyer advised the seller that finance had been approved and the contract became buyer was relying on funds to come from another source and not from a financier

.The seller disputed the payment of the agent's commission and the matter came before the Court. The Magistrate, following a number of previous cases, found that the commission is only payable:

- on settlement of the contract;
- or
- if the terms of the agreement appointing the agent clearly set out the circumstances in which the agent is entitled to the commission and the agent has done what they are required to do under the agreement.

In the above example, it was held that the commission was only payable on settlement and as the matter did not settle, the agent was unable to claim his commission.

Clear terms of appointment

Whilst we do not agree entirely with the decision, it provides a further good reason to clearly set out in the PAMD Form 22a in what circumstances you are entitled to be paid your commission.

If you need any further help please contact Roland Taylor in our Mackay office on 4963 0800 or rtaylor@swc.net.au

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