

CONVEYANCING UPDATE

A Division of McKays Solicitors

For a smooth, hassle free conveyancing solution...

Getting the description right in item 3 is critical...

Occasionally you will be faced with a difficulty of completing a form 22A (Listing Form) when you are selling a block of land that does not "exist".

Getting the description right in Item 3 is critical.

Many readers will recognise the Salomon case in which an agent listed a property for sale which was subject to the local council giving development approval. Council gave approval on the basis that a part of the block was given to the council.

Because this reduced the size of the land, the parties entered into a new contract, **but of course the initial listing agreement did not cover the second sale.**

Because of the property description in the listing agreement the right to commission was lost.

We recommend when describing the property that you use the following words:-

"20 Smith Street or any part thereof".

Next to the word lot you put "part of lot 20 on RP 742568".

If the whole of 20 Smith Street has been sold without conditions then in the lot and plan number you would simply put the current lot and plan number for 20 Smith Street.

The art of attempting to get out of paying commission rose to a new level in the case of David Deane and Associates and Bonny View

In that case a Put and Call agreement was entered into by the parties. When the Put and Call agreement was exercised, a formal contract was entered into by the parties with the buyer electing to use one of his other companies to purchase the property.

While it was agreed that the different buyer was essentially the same as the buyer who entered into the Put and Call agreement, the seller argued that the contract of sale was entered into only when the option agreement was exercised and as the listing form had expired by this time then the seller was not required to pay commission

Fortunately on this occasion the Court of Appeal went to great lengths to say that **even if the new buyer wasn't related to the first buyer, the seller still had to pay commission.**

The court stated that a Put and Call agreement constitutes a contract, and if the seller lets the buyer out then the seller may still be liable for commission where the terms recommended by us or by the REIQ are used.

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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