

CONVEYANCING UPDATE

A Division of McKays Solicitors

For a smooth, hassle free conveyancing solution...

Important changes to the Property Agents and Motor Dealers Act...

The act has been changed, creating a number of offences for agents. If you breach any of these sections you can be fined by the Office of Fair Trading.

Set out below is an explanation of the sections and how you can avoid being prosecuted.

Claiming too much Commission

It is an offence for an agent to recover, retain or sue for more than the allowed commission.

Previously all you had to do was repay the excess, but now it is actually an offence and you can be prosecuted for it. This is even if the seller offers to pay you more than the allowed amount.

Who must hold a license

The people exempt from being required to hold a sales persons' licence has been expanded to include people who only carry out jobs of an administrative nature. This covers the previous anomaly where a receptionist technically needed to have a sales persons' licence.

It may be possible now for personal

assistants to avoid having to obtain a sales persons' licence as long as all they do is prepare contracts and other paper work for the sales person and take telephone messages for the sales person.

They will still not be able to conduct open houses or show people through houses or be involved in any negotiations of the sales price. They could not, for example, contact the seller and say they have received an offer for \$..... dollars.

Auctions

If the property is being sold by auction, the auctioneer must obtain from the seller a written notice setting out the reserve price, or if the seller has not set a reserve price, that the seller understands that the offered property will be sold to the highest bidder when the property is auctioned.

An auctioneer must not help a seller decide the reserve price unless, before the seller decides the price, the auctioneer gives the seller a copy of a comparative market analysis or if a comparative market analysis cannot be prepared, a written explanation showing how the auctioneer decided the market value of the property.

A comparative market analysis means a document comparing the offered property with at least 3 other properties sold within the previous 6 months of a similar standard or condition and which are within 5km of that property.

The auctioneer cannot provide to a bidder:

- any information disclosing the amount of the reserve price or
- whether a reserve price has even been set or
- a price the auctioneer considers likely to be successful.

The auctioneer may however, on the seller's written instructions, give a copy of the comparative market analysis.

General Sales

A sales person may not give a seller advice about the price of a residential property unless the sales person gives the seller a copy of the comparative market analysis.

If the property is to be offered by sale, but not by auction, and the seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the property, then the agent must not disclose to any potential buyer, the price at which the seller is willing to sell the property.

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



March 2006

This newsletter is for the general information of McKays' clients and associates. The information contained in the newsletter should not be relied upon without first consulting us and obtaining specific advice.

Statewide Conveyancing

Use the property specialists.. the hassle-free conveyancing solution!

Our efficient and friendly staff will:

- Keep you informed
- Respond quickly to your calls
- Provide accurate legal advice when required
- Be one step ahead, to avoid possible problems

In Addition, we will provide:

- Fixed Fees
- No hidden extras
- Immediate access to experienced solicitors if required.