

CONVEYANCING UPDATE

A Division of McKays Solicitors

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Commissions - Part 2

Last month we discussed how to guarantee payment of your commission. This month we will discuss what effect a change in the contract price has on your commission.

PAMD Act 2000

Whilst the PAMD Form 22a Appointment sets out the amount of commission you and the seller have agreed will be payable for your service, payment of commission is always subject to the requirements set out in the PAMD Act and Regulation.

Section 139 of the PAMD Act provides that **an agent must not claim commission worked out on an amount which is more than the actual sale price or the amount collected.**

In addition to this rule under the Act, the Schedule to the PAMD Regulation 2001 provides that the maximum commission payable is 5% on the first \$18,000 of the sale price plus 2.5% of any amount of the sale price that exceeds \$18,000.

Adjustments to commission

The effect of the above restrictions on your commission is that regardless of the price negotiated between the buyer and seller upon entering into the contract, payment of your commission based upon price, this amount is **not** guaranteed.

The most common example of an agent's commission being reduced after the contract has been entered into is where there is a reduction in the sale price negotiated between the parties due to defects in the building and pest reports.

A similar situation occurred recently when a seller agreed to substantially reduce the purchase price because the valuation carried out for the property by the buyer's financier came in well below the sale price.

After settlement, the agent released the balance deposit to the seller after deducting the commission. The seller disputed the amount of the commission because it was calculated on the original purchase price, rather than the reduced purchase price.

Under the PAMD Act, the agent in the above situation was required to pay to the seller the excess commission withheld to avoid any action being taken against the agent under the Act. Had the agent not resolved the matter with the seller, the agent may have been convicted of breaching the Act and fined a maximum of \$15,000.00.

Whilst adjustments to the purchase price made on settlement for outgoings will not affect the commission payable to you, any agreed reduction in the purchase due to defects in a building inspection report for example, will reduce the amount of commission you are legally entitled to claim.

Please do not hesitate to contact us if you have any queries regarding your entitlement to 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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