



New Law Bulletin

Protecting Consumers Selling Property

In 2014 the Queensland State Government introduced new legislation, being the Property Occupations Act 2014.

Its objects are to provide for licencing and regulating of persons as Property Agents and to protect consumers.

In Division 4 of the Act, the legislation now makes a distinction between who effectively “sells” a property.

This is important because it now recognises that the Property Agent may not be entitled to a commission unless they are the “effective cause of the sale”. This term has received discussion in cases and has an important meaning.

Previously, it could be argued (successfully) by the Agent that if the suitable exclusive agency listing form were signed, that in any circumstance of a sale of the property, the agent would be entitled to a commission.

The leading authority on the meaning of this term is Moneywood Pty Ltd V Salamon Nominees Pty Ltd 202CLR351

- “the inquiry is whether the actions of the Agent really brought about the relation of buyer and seller and it is seldom conclusive that there were other events which could each be described as a cause of the ensuing sale” (per Jacobs J in L J Hooker V W J Adams Estates Pty Ltd [1977]HCA13)
- “mere introduction of the ultimate purchaser is ordinarily not sufficient. ... it would be “quite artificial to suppose that the parties intended that their agent should earn his commissions simply by finding or locating an individual who, independently of any further actions by the agent, later agreed to buy the subject property.””

This is of further significance because now, under an exclusive agency, a selling agent is entitled to an agreed commission whether or not the agent is the “effective cause of the sale”.

If the sale is subject to a sole agency, the agent is not entitled to commission if the seller (as opposed to the selling agent) was the effective cause of the sale.

This distinction, between Exclusive Agency & Sole Agency, must also be discussed with the client when the suitable appointment form is signed.

Another interesting part of the new legislation is part 10, which provides that a District Court may grant injunctions against persons whose actions contravene the Act. For example, preventing unconscionable conduct by marketeers who breach the Act.

The Act therefore seeks to go further than the old Property Agents Motor Dealers Act and to provide some clarity to consumers concerning the above matters.