

NON-COMPLIANCE PROVES COSTLY FOR AGENT

A real estate agent has recently lost a right to claim commission of nearly \$230,000 as a result of failing to properly complete a PAMDA Form 22a.

The agent, Yong International Pty Ltd, was instructed to act on the sale of a parcel of land at Redbank Plains, Queensland, in the sum of \$9 million. The parties completed a Form 22a, but, crucially, clause 4.1 was left blank. Clause 4.1 is the section in which the agent is required to list the services it will provide (e.g. marketing, open house, sale by auction and similar matters). For various reasons, the contract did not settle and substantial non-refundable payments made by the buyer were kept by the seller. The agent claimed its commission against the seller.

The seller raised two arguments in defence to the claim. One was a technical argument relating to the way in which the contract was terminated. The second was that, as the Form 22a had not been properly completed, there was no obligation to make a payment pursuant to Sections 133 and 134 of the *Property Agents and Motor Dealers Act 2000*.

The agent attempted to argue that it had "substantially complied" with the prescribed form. This argument in effect means that the court will not go through the document with a fine tooth comb, looking for every minor error or failure to complete.

The District Court held that failing to put anything at all in clause 4.1 could not amount to substantial compliance. The Court of Appeal agreed. It was held that, not entering on the Form 22a the details of the work that the appointment was supposed to cover, it could not be considered a substantial compliance. The effect of this was that, not only did the agent miss out on commission of over \$226,000, it also incurred substantial costs.

We consider that the work to be listed in clause 4.1 should be as wide as possible. In addition, it should be made clear who will be paying for any particular item. If, for example, the clause simply says "newspaper advertising", it is possible that a client will attempt to argue that this advertising is at the cost of the agent.

Please contact us on 07 3849 6263 or reception@oneillslawyers.com.au if you need any assistance in understanding and/or complying with your legal obligations including those arising out of PAMDA or the conduct of your business generally.