

## GETTING THE PAPERWORK RIGHT

All Real Estate Agents are, or should be, familiar with Sections 133 and 134 of the *Property Agents and Motor Dealers Act 2000*. In summary, these sections provide that a Real Estate Agent is only entitled to commission on the sale of a property if his appointment is in writing and in the prescribed form or something very close to it. The prescribed form in these circumstances is a PAMDa Form 22a.

Clause 4.1 of that form states

### 4.1 Performance of Service

**To the Agent:** state how you will perform the service and ANY conditions, limitations or restrictions on the performance of the service (e.g. holding of open house, performing service as multi-list or conjunction sale, when and how auction to be conducted).

Strict compliance with a prescribed form is not necessary, as long as "substantial compliance" has taken place. This of course raises the question of what is substantial compliance. The Court of Appeal has recently considered this question in the case of *Yong Internationals Pty Ltd v. Gibbs and ors*. In that case, the Agent, Yong Internationals Pty Ltd ("Yong") was instructed to act in the sale of a parcel of land at Redbank Plains for a price of \$9M. A form 22a was completed by the parties, but, relevantly, Clause 4.1 was left blank.

For various reasons, the transaction did not settle. The Sellers refused to pay Yong any commission, denying that it was entitled to it. Yong sued in the District Court, and lost. It then appealed this decision.

Although it was common ground between the parties that substantial compliance with the form was sufficient, the Court held that failing to complete Section 4.1 in any way did not amount to substantial compliance.

The Court held that the Agent was required under PAMDa to insert details of the services which it intended to provide in Clause 4.1. By failing to put anything in this section, it could not be said that the requirement to provide details of the service had been satisfied. Accordingly, there was no substantial compliance with the requirements of the legislation, and the Agent was not entitled to its commission.

This case shows the importance of ensuring that all paperwork, including the form 22a, is completed properly. In this case, the commission claimed was over \$225,000.00, so the failure to fill in a couple of lines on a prescribed form cost the Agent a very substantial sum of money.

Please contact us on 07 3849 6263 or at [reception@oneillslawyers.com.au](mailto:reception@oneillslawyers.com.au) if we can be of any further assistance.