

## **WHEN IS AN AGENT ENTITLED TO COMMISSION?**

***A real estate agent is entitled to commission on the sale of a property if that agent is the "effective cause of the sale" of the property, whether during or after the period of the exclusive or open agency.***

A recent Queensland District Court judgment has defined what an agent must do to be able to legally recover a commission on a sale of a property.

In this case there was no dispute that the agent and seller had entered into an open listing, or that the agent conducted a competent and extensive advertising programme. The eventual purchaser found the property through the agent's advertisement on the HomeHound website.

### **It was critical in this instance that:**

- the buyer inspected the property on two occasions;
- there was a considerable chain of emails passing between the buyer and the agent in an attempt to negotiate an acceptable price;
- the Contract was prepared by the agent and signed by the buyer; and
- the Contract was presented to the seller.

The seller and buyer then tried to cut the agent out of the loop with the seller claiming that, since further negotiations then took place directly between them, the agent was not the "effective cause of sale" of the property.

The court rejected the seller's argument and took the view that **the real question was whether the actions of the agent really brought about the relationship of buyer and seller**. The court found in this particular case that the agent's actions, including the above, did do exactly this and awarded damages/commission and legal costs to the plaintiff agent.

It remains to be seen whether or not the case will be appealed.

If you want advice on your rights to claim in circumstances like the above, or on any other legal issues, please contact our specialist litigation lawyer, **Nigel Collins**, Senior Associate, O'Neills Business Lawyers.

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