The Property Occupations Form 6 – some observations and best practice tips

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In previous journal articles, we examined some frequently asked questions by members utilising the REIQ Agency Advisor Service and the REIQ Legal Advisory Service in relation to the Property Occupations Act 2014 (Qld) (the POA) and, in particular, some common queries relating to the completion of the Property Occupations Form 6 (Appointment and reappointment of a property agent, resident letting agent or property auctioneer) (Form 6).

In this article, we consider two issues that have recently arisen in relation to the completion of the Form 6.

Prior appointment of another property agent

The commencement of the POA on 1 December 2014 also saw the end of the Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001 (Qld) (the Code of Conduct).

Whilst the Code of Conduct was not replaced, the Property Occupations Regulation 2014 (the Regulation) encompasses some of the principles and rules that were contained within the Code of Conduct.

In particular, section 21(1) of the Regulation provides that:

“Before accepting an appointment to act as a property agent on behalf of a client to perform a service, the property agent (the new agent) must take reasonable steps to find out whether the client has already appointed another property agent (an existing agent) to act as a property agent to perform the service.”

Section 21(3) of the Regulation provides that:

“The new agent must not solicit or accept the appointment if-

a) the new agent knows, or should know, the appointment of an existing agent to perform the services is in force; and
b) the client may have to pay the following if the client appoints the new agent to perform the service-

i) a commission under each appointment;
ii) damages for breach of contract under the existing agent’s appointment.”

However, in accordance with section 21(4) of the Regulation, subsection (3) does not apply if, before the client signs the new appointment, the agent provides the client with a written statement that if the client appoints the agent to perform the service, the client may have to pay the following:

a) a commission under each appointment;
b) damages for breach of contract under the existing agent’s appointment.

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In order to assist agents, the REIQ has produced an Items Schedule for each of the seven Form 6 templates available on Realworks. Item A in each of the Items Schedules provides three check boxes that reflect subsections (1), (2) and (4) outlined above.

Once an agent has taken reasonable steps to find out whether the client has already appointed another agent to perform the services listed in the Form 6, the first box should be checked. If the client confirms that they have not appointed another agent to perform the services listed in the Form 6, then the second box can be checked.

However, if the client advises that they have already appointed another agent to perform the services listed in the Form 6, or if they are unable to confirm whether or not they have appointed another agent, the second box should be left unchecked.

If the agent still wishes to accept the appointment, they must provide the client with a written statement, in accordance with section 21(4) of the Regulation, before the third box can be checked. A copy of the written statement provided to the client should also be attached to the Form 6.

It is important to note that at no stage should all three boxes be checked by an agent or client when completing the Form 6, or if they are unable to confirm whether or not they have already appointed another agent, then the second box should be left unchecked.

Commercial scale appointments
A commercial scale appointment is defined in the POA as:

“Commercial scale appointment, for appointment of a property agent to sell residential property under a sole or exclusive agency, means an appointment for sale of:

(a) 3 or more residential properties; or
(b) a lot in a community titles scheme as part of the sale of management rights to the person who is to become the letting agent for the community titles scheme.”

In Part 6 of the Form 6, agents are required to select whether the agent has been appointed on a sole or exclusive agency basis or under an open listing.