



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

WORDS BY ANDREW PERSIJN, SENIOR ASSOCIATE,
CARTER NEWELL LAWYERS

*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 Regulation¹ provides that:

“Before accepting an appointment to act as a property agent for 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.

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), (3) 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 and Items Schedule.

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.

Members will no doubt be aware of the changes made to Part 6 of the Form 6 when the Office of Fair Trading released Version 3 of the Form 6 on 1 October 2015. The layout of Part 6 has been entirely rearranged and the explanatory notes amended. The improved layout ensures that both the client and agent are fully conversant with the circumstances in which the agent will be entitled to commission.

In addition to this and other changes, an acknowledgment has been inserted at the end of Part 6 for the parties to acknowledge that the agent has provided the client with information about sole and exclusive agency appointments.

In Part 4 of the Form 6, agents are required to specify the term of the appointment. If the agent has been appointed on a sole or exclusive agency basis, the maximum term for the appointment is 90 days. However, the 90 days maximum term does not apply to commercial scale appointments.

It is not clear on the face of the Form 6 whether it is appropriate for an agent to select a single appointment with a start and an end date or a continuing appointment in circumstances where the 90 day maximum term does not apply to commercial scale appointments.

The answer can be found in section 108(2) of the POA, which provides that an appointment on a sole or exclusive agency basis must state in writing whether the appointment is for a sole or exclusive agency as well as the day the appointment ends.

Accordingly, for a commercial scale appointment on a sole or exclusive agency basis, agents should select a single appointment with a start and an end date, remembering that the 90 day maximum term does not apply.

Agents will be aware that section 112(1) of the POA provides that any appointment is ineffective from the time it is made if the term of the appointment is more than 90 days. However, section 112(2) of the POA provides that subsection (1) does not apply to commercial scale appointments.

As a matter of best practice, when dealing with commercial scale appointments, it is recommended that agents advise the client in writing that the appointment is a commercial scale appointment in accordance with the POA and that the 90 day maximum term for a sole or exclusive agency does not apply. The parties can then agree to the term of the appointment, ensuring that an end date is inserted into the Form 6.

Conclusion

Hopefully this article will assist members in better understanding the procedures which must be followed in order to comply with section 21 of the Regulation as well as provide assistance when completing a Form 6 for a commercial scale appointment.

It is crucial that agents exercise caution when preparing a Form 6 and ensure that all relevant information is included in order for the executed appointments to be valid and enforceable. If members have any further queries, we encourage them to contact the REIQ Agency Advisor Service on 07 3249 7347 for assistance.

¹ Section 27 of the Regulation applies for resident letting agents.