

EAC Agency Agreements and the challenging question of Material Fact and OH&S

Recently Estate Agents Co-operative Limited (EAC) returned to the market with a new range of agency agreements. Their development was in consultation with solicitors, Greg Jemmeson and Michael Parasyn, and barrister Geoff Evans.

Requirements of agency agreements are set out and prescribed in the Property, Stock & Business Agents Act 2002 (the Act) and the Regulations 2003. The Regulations in particular prescribe what terms must be contained in an agency agreement.

It is important to note that both Material Fact and Occupational Health and safety (OH&S) are not prescribed terms and are not required to be set out in an agency agreement.

The Act requires that agents must not conceal a material fact to prospective buyers and tenants. Agents also have a responsibility to ensure that premises are safe for purposes such as inspections.

It is our opinion that the current Material Fact and OH&S clauses, which appear in other industry agreements, do not necessarily protect an agent should a Material Fact or OH&S matter arise. These clauses on their own do not offer the Agent comfort, the Agent is required to make their own inquiries independent of the Agency Agreement as to any issues of Material Fact and OH&S, but not limited to just those issues.

Accordingly, EAC is preparing a more appropriate property assessment form. This form will allow the agent to make the relevant and appropriate enquiries of the Principal including disclosure matters such as Material Facts and OH&S and facilitate such matters are brought to the Principal's attention and discussed. In this respect, the current clauses appearing in other agency agreements do not give the agent the same level of comfort. Similarly, with the Occupational Health & Safety clauses, at all times it is encumbered upon the agent to conduct an inspection of the property and the inclusion of such a clause does not absolve the agent from that responsibility.

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About Jemmeson and Fisher Solicitors

Greg is a partner in Jemmeson and Fisher a boutique legal and accounting firm situated in Surry Hills which specialises in consulting services to the real estate industry. Greg has spent the past twenty years working in and around the Real Estate Industry, representing agents before the Office of Fair Trading, as well as commission disputes, industrial actions and the sale and purchase of real estate businesses. Greg also spent ten years with the Office of Fair Trading exclusively in the field of real estate compliance.

About Michael Parasyn, Solicitor

Michael's grounding as a licensed real estate agent, business agent, stock and station agent, registered valuer and an active auctioneer for 30 years covered all aspects of agency activity. Armed with this practical experience Michael embarked on the practice of law in 1981 where he continues today specialising in all agency matters including licensing, commissions, franchise matters, defending actions against agents as well as substantial teaching and CPD training for TAFE and various industry bodies.

About Geoff Evans, Barrister

Geoff Evans is a senior barrister practising from Wentworth Chambers, Sydney. Geoff has been extensively briefed for twenty years in matters relating to Property Stock and Business Agents legislation.