



Conjunction Agreements



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Many of us enter into conjunction agreements throughout our time in real estate. For those who are not aware, a conjunction agreement is where the agent holding the exclusive agency agreement gives another agent the right to sell the property and agrees to a split of the commission.

Section 34 of the Property, Stock & Business Agent's Act 2002 (the Act), states that an agent who is sharing commission with another must enter into a written agreement. This written agreement must contain the licensees' names and numbers, and set out the means by which the commission is going to be split. Failure to have such a written agreement is a breach of the Act and therefore can result in prosecution. In addition, the conjunction agreement is unenforceable.

One of the mistakes made by people entering into conjunction agreements, is to take for granted the exclusive agency agreement. That is, they do not check to see if the exclusive agency agreement is valid. A conjunction agreement is only as strong as the exclusive agency agreement that sits behind it. If you are entering into a conjunction agreement you should always check the exclusive agency agreement to ensure that it complies with the Act and to ensure that it even exists in the first place. To protect yourselves, do not accept a conjunction agreement without checking the exclusive agency agreement.

There has been a move in this State to ensure that everyone enters into exclusive agency agreements. This is done as a means of protecting the stock that you hold to sell. What happens then if an agent approaches the holder of the exclusive agency agreement with a prospective purchaser. In most cases, the holder of the exclusive agency agreement sends the other agent away. This has some legal problems. The holder of the exclusive agency agreement has a fiduciary duty to act in the best interests of their client. They are also contracted to use their best endeavours to sell the property under the agency agreement. By

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refusing to deal with the conjunction agent, the agent may not be acting in the best interests of their client and therefore may be liable to a fiduciary duty claim in the Consumer Trader & Tenancy Tribunal. It may be something that people need to consider when dealing with conjunction agents. Refusing to deal with them may be perilous and you may need to consider working with them at times to widen the marketplace for the consumer. Narrowing the marketplace to your database may not be acting in your clients' best interests and therefore may make you liable for damages.

***Cheers,  
Bailey Compton  
and The team at ACP/Leverage!***



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