

A legal perspective:

Demystifying the role of buyers' agents

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The process of buying and selling property can be confusing and daunting, especially for first time buyers. As such, parties to a real estate transaction understandably rely heavily on the experience and expertise of real estate agents to assist them to manoeuvre the legal and procedural pitfalls. However, many parties to real estate transactions are uncertain as to the duties owed by agents and to whom those duties are owed.

It has traditionally been the case that the seller engages a salesperson to sell his or her property and the prospective buyer is unrepresented in the transaction. As such, the salesperson has largely been in control of the process and the negotiations between

the parties. The salesperson is responsible for making representations about the characteristics and nature of the property to prospective buyers during the marketing of the property. He or she is obliged to disclose all relevant information to a prospective buyer to assist them in their decision as to whether to purchase the property. The salesperson usually also prepares the contract and other documentation in relation to the sale of the property.

In these circumstances, a prospective buyer may forget the salesperson's loyalties lie with the seller and may come to rely upon the agent's advice as if he or she was also the buyer's agent. This is not the case.



The salesperson takes instructions from the seller and seeks to achieve the best possible price for the seller's property. At all times, agents are obliged to follow their client's instructions, act in their client's best interests and keep their client informed of any significant developments or issues in relation to the transaction (sections 9, 10 and 11 of the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001 (Qld)*).

There is an increasing trend for buyers to engage their own agent to assist in some, or all, aspects of purchasing a property. A buyers' agent may be retained to:


- ▣ Identify appropriate properties for purchase;
- ▣ Accompany clients at inspections or inspect properties on behalf of clients to ascertain their suitability;
- ▣ Assist a buyer to ascertain a monetary limit for a property which is affordable in his or her specific circumstances; and/or
- ▣ Advise on and negotiate the purchase of a specific property.

In some instances, however, buyers' agents are retained to simply negotiate the purchase of a property located by their client or to bid at an auction on their client's behalf. As indicated above, buyers' agents are governed by the same

PAMD Code of Conduct as seller's agents and similarly must adhere to the provisions of the PAMD Act.

The fundamental difference between a buyer's agent and a traditional seller's agent is in respect of which party's interests they protect. A buyer's agent works for, and acts in the best interests of, the buyer; whereas a seller's agent works for, and acts in the best interests of, the seller.

In circumstances where the respective agents' duties and allegiances are clearly defined, agents (whether they are seller's agents or buyer's agents) are precluded at law from acting for, or accepting a commission from, more than one party to a transaction. To do so would be a clear conflict of interest in breach of sections 14 and 25 of the PAMD Code of Conduct and section 162 of the PAMD Act.

Further, irrespective of whether an agent is engaged as a buyer's or seller's agent, he or she must exercise reasonable skill, care and diligence in relation to the service for which he or she is engaged and complete all work for his or her client as soon as is reasonably practicable (section 8 of the PAMD Code of Conduct). 

The PAMD Act and the PAMD Real Estate Agency Practice Code of Conduct can be downloaded from www.legislation.qld.gov.au



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