

CAN A SINGLE COVER PAGE BE USED FOR BOTH PROPOSED & SIGNED CONTRACTS AND STILL COMPLY WITH THE PROPERTY AGENTS & MOTOR DEALERS ACT REQUIREMENTS?

A common practice continues amongst a number of Agents where the Cover Page used to present a proposed contract to a buyer, is again used when presenting the final signed contract to a buyer.

The question has arisen as to whether the use of the same cover page, (which often pre-dates the contract date) is valid when presenting the signed contract to a buyer.

Sections 366 (“proposed contract”) and Section 365 (“signed contract”) of the Property Agent & Motor Dealers Act (“the Act”), set out the way in which a proposed contract and a signed contract are to be presented to a buyer under the Act. The only difference between the two sections is that s365 refers to a “*relevant contract*” (which is a signed contract) and s366 refers to a “*proposed relevant contract*”.

Some pre-printed cover pages that we have seen do not distinguish between the contract as being a “*proposed relevant contract*” and a “*relevant contract*”. In fact we have seen some cover pages where a signed contract is referred to as a “*proposed contract*”. Other pre-printed cover pages require the agent or buyer to complete the cover page by selecting whether the contract is a “*relevant*” or “*proposed*” contract. In this situation the seller is relying on the agent or the buyer to properly complete the cover page.

At best the above situation will create confusion as to which contract the cover page refers to, especially if the same cover page is used when presenting both the proposed and signed contract. At worst this practice may invalidate the cover page, resulting in the presentation of the contracts being invalid under the Act, which would allow a buyer to terminate. Whilst we are not aware of any Court decisions that are exactly on point it is very important to stress that the Courts are interpreting the Act very strictly.

To avoid the risk of a buyer terminating a contract in this manner, we support the “best practice” proposition to have a separate cover page used for both a proposed contract and a signed contract. This will avoid confusion, the risk of termination of a contract, and expensive litigation.

In an environment where strict interpretation of the Act has resulted in a number of buyers successfully terminating the contract it is important to emphasise that sellers and their agents should take all steps to protect their interests. No precaution in this regard is too much.

If you have any queries in relation to this please contact Byron Cannon of our office on (07) 5449 6600 or byron@fclawyers.com.au.