

JUST WHEN YOU THOUGHT IT WAS SAFE TO USE A STANDARD FORM ...

Most real estate agencies wouldn't think twice about relying on a standard form approved by the Director of Consumer Affairs Victoria. But in a cautionary tale decided on appeal last month, the Court has shown that not even Consumer Affairs (which is in the business of advising consumers and businesses alike) can navigate without incident the tough regulatory regime that is the *Estate Agents Act* 1990 (the **Act**).

The case in question concerns two rebate statement forms authorised by the Director of Consumer Affairs Victoria to be published on the Consumer Affairs website. One of those forms contained a rebate prohibition statement which mirrored s49A(4)(c) of the Act, and the other did not. The agent in this case used the latter (the form intended for circumstances where there were no applicable rebates, as was the case).

Section 49A and 50 of the Act set out in exhaustive detail what an agent is required to disclose to be entitled to their commissions. For example, the agent's authority must disclose details about rebates and include the **exact words** set out in section 49A(4)(c).

The agent (relying on the form published by Consumer Affairs) sold a property in Keysborough but the purchaser defaulted under their contract. The property was resold, not by that agent but during the period of the agent's exclusive authority. The agent sued the vendor in the County Court, claiming \$385,000.00 for its commissions arising from both sales.

The agent likely considered its case to be straightforward. Imagine the agent's surprise then when the trial judge found that the agent had not complied with the Act and that the agent was not entitled to its commissions on either of the sales. This was upheld on appeal.

This case illustrates the need for agents to be ever vigilant when it comes to the disclosures in their agency authorities. Agents should ensure that rebate statements use the exact wording provided for at section 49A(4). This applies even when there are no rebates to disclose.

Even though the published version of the offending Consumer Affairs form has now been changed, the status of any authority signed during that period remains in question. A vendor could be in a position to seek to recover commissions already paid under an authority that used the previous form of wording.

If you are an agent concerned about any prior or existing agreements or the form of the authority you are currently using, we urge you to get in touch with your legal advisors and make sure that the authorities you have deployed in your business are up to date. [Sven Burchartz](#) and [Peter Lettieri](#) have experience in this unique situation.

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