Commission-Only Arrangements

The Fair Work Ombudsman went on an Australia wide auditing blitz in 2012 to ensure that real estate salespeople being paid on a commission-only basis were getting a fair deal. Maybe you were one of the 350 agencies in NSW alone that were checked? The investigation was sparked by a growing number of complaints about unfair and unlawful commission-only arrangements across Australia. Particularly concerning was a number of cases involving inexperienced or junior staff being significantly underpaid under illegal commission-only arrangements.

For example, earlier this year a Melbourne real estate agency was forced by the Fair Work Ombudsman to pay one of their employees more than $10,000 after he was underpaid as part of an unlawful employment arrangement. The salesman at a Dandenong agency was initially unlawfully required to perform four weeks of unpaid work under a purported ‘training program’. Over the next four months, he entered into what was effectively a commission-only arrangement before his employment was terminated.

The underpaid salesman in this instance was a recent Sri Lankan immigrant in his 50s. Whether the agency’s directors were trying to take advantage of the man’s possible unfamiliarity with his rights as an employee, or were simply ignorant of their responsibilities, we do not know for sure. Nonetheless, we have a strong suspicion that this is not an isolated occurrence. This newsletter serves as a timely reminder to all agencies of their obligations to their employees with respect to fair working conditions.

The Real Estate Industry Award 2010 sets out the minimum wage requirements for the real estate industry across Australia. It also sets out strict rules for commission-only employment arrangements. If you currently employ staff on a commission-only basis, or plan to in the future, you need to be thoroughly acquainted with these rules.

In short, commission-only arrangements are only allowed when it can be demonstrated that an employee has earned more than the minimum wage payable under the Award selling real estate in any 12-month period over the preceding five years.
Additionally, junior employees (under 21 years of age, casuals, property sales associates and trainees) cannot be employed on a commission only basis. A licensee or Certificate of Registration holder can only enter into a written ‘commission-only agreement’ if they can prove they meet these requirements.

The Fair Work Ombudsman came down hard on the directors of the Dandenong agency, forcing them to back-pay the man $10,300. Also, as an alternative to litigation, the directors entered into an Enforceable Undertaking with the Fair Work Ombudsman, in which they agreed to the following conditions among others:

• Donate $1000 to the Peninsula Community Legal Centre
• Make a formal written apology to the underpaid employee
• Develop processes for ensuring future compliance with workplace laws for all real estate agencies they are involved in - and provide evidence of the measures to the Fair Work Ombudsman
• Undertake a professional audit of all real estate agencies they are involved in and rectify any underpayments identified
• Provide professional workplace relations training for all managerial, human resources, recruitment and payroll staff at real estate agencies they are involved in for the next three years,
• Publish a public notice detailing the contraventions of workplace laws on the agency’s website and in The Dandenong Leader and Melbourne Weekly newspapers.

The Fair Work Ombudsman is increasingly using Enforceable Undertakings as a means of ensuring compliance. Clearly the impacts of such an undertaking on a business can be extremely harmful. So, if you are a director or principal licensee, it may be time to re-visit the Real Estate Industry Award 2010 and familiarise yourself with your responsibilities under it. If you are an employee who thinks they might be employed under an unfair or unlawful employment agreement, the Dandenong salesman’s story is a great example of how employees can enforce their rights to fair pay.

The Fair Work Ombudsman’s website - www.fairwork.gov.au - has a number of tools and resources, including PayCheck Plus and an Award Finder, to assist business-owners calculate the correct pay for their employees. You should consult these before entering into any commission-only agreement, or to ensure any current agreements are compliant.

Til next time,
Wishing you every success in your business ventures,
Rosy Sullivan

Would you like to win $10,000 cash?
News from the Office

We haven’t shared news from the office for over a month, and so much has been happening. In our new premises at Town Hall Square, we are now all enjoying listening to the testing of the chiming of the clock on the Town Hall and we are all keen for it to be occurring on a daily basis. Being in the centre of Sydney at the moment is an exciting time, with all the Naval celebrations and the city art work that lurks around every corner. We now have our own blue pet snail outside of our office windows (just check the College Facebook page for photos). Only today, we had a visit from one of our long-term students who is also the Mayor of Urana who was attending the NSW Mayoral Conference next door in the Town Hall. We are all enjoying the fact that many of our students are just popping in for a quick visit – so if you are in the city, please drop in and say hello.

Within the office, we have a new staff member in Ben Phoebus, who is working in an administrative role and student liaison. This is definitely swelling the number of men in the office to five, which is starting to look like a bit of a take over…………….the girls are not so sure that this is a good thing!! Many of you will have seen on the College Facebook page that George Evangelidis became a grandfather for the first time to a beautiful little girl (Evangeline or Evi for short). George and his wife Sophie have been to visit their new granddaughter in Malaysia and any mention of little Evi brings an instant smile to George’s face – he has even started talk of opening the Kuala Lumpur campus of the College (not going to happen George – you are staying in Sydney).

This week we had belated celebrations for Megan’s 21st birthday. Whilst she actually turned 21 over a month ago, so many of the ACP team have been sick with a virus and others with a cold, that it took us a while to get together and enjoy the birthday event. We all went to Aria Restaurant at Circular Quay and enjoyed some magnificent food, excellent service and outstanding views.

The big news in the office today is that we have turned maroon and white in support of the Manly Sea Eagles in the Rugby League grand final this weekend. Good luck to everyone, whichever team you barrack for and have a fun and safe long weekend for those of you in New South Wales.

And for most of you, don’t forget to turn your clock forward one hour at 2.00am on Sunday morning for daylight saving time.
Important Points about the 2013 Premier Auctioneers Competition:

- Friday 25th October (9am to 4pm)
- Saturday 26th October (6pm onwards)
- Enter now or miss the opportunity to win $10,000 in cash
- NO entry fee
- You can still work all day on Saturday
- The event is raising funds for the Westmead Medical Research Foundation and in particular cancer and rare diseases research
- You don’t need to be an accredited auctioneer to enter – just test your skills
- Put your money where your mouth is

Free Assessment

Send us your resume & copies of any qualification transcripts you may have for a free and confidential preliminary RPL assessment.

ACoP runs a Fast Track program which, in conjunction with Recognition of Prior Learning (RPL) assessment, will enable you to complete your Real Estate Licence qualification in 5 days with take home assessments.

We will also assist you with completion and submission of your licence application to NSW Fair Trading free of charge.

Is it Time You Upgraded to Your Licence?

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**Australian College of Professionals**

The College trainers will be conducting Certificate of Registration and CPD courses in city and country areas of NSW in 2014.

Ring 1300 88 48 10 to book

or

visit our website - www.acop.edu.au

Customised and in-house CPD courses are available. We come to you!

Real Estate, Strata, Business Broking, On-site Residential or Stock & Station.

In Sydney, courses are run at Bankstown, Castle Hill, the CBD at St Andrew's House, Hurstville, Liverpool and the Northern Beaches.