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CPD COURSES

Baulkham Hills

Sales

Thurs 11th Apr

Tamworth

Sales & Prop Mgmt

Fri 12th Apr

Coffs Harbour

Sales & Prop Mgmt or
Strata

Mon 15th Apr

Sydney

Comm & Retail Leasing

Wed 17th Apr

Gosford

Sales & Prop Mgmt

Wed 24th Apr

Sydney

Sales or Prop Mgmt

Fri 26th Apr

Sydney

Strata

Tue 30th Apr

Northern Beaches

Sales & Prop Mgmt

Thurs 2nd May

Auctions and the Use of a Power of Attorney

'Power of attorney' is a term that is often bandied about, but which few people really understand. During our CPD training courses, the issue often arises in discussion and in particular with reference to bidders using a power of attorney. So for all those agents with whom we have discussed this matter, and for those agents who hadn't thought about it (yet), we have undertaken some research that we hope will make it clearer.

All property professionals involved with auctions will, from time to time, encounter bidders who are acting under a power of attorney. But what exactly is a power of attorney? When do they apply? And how do they operate in relation to real estate auctions? If you wait until you are actually dealing with one to ask these questions, you will wind up in a world of confusion.

In this edition of the College Chronicle we want to demystify this frequently misunderstood area. Part 1 provides a basic introduction to powers of attorney and Part 2 explores how they relate to real estate auctions.

What is a power of attorney?

A power of attorney is a legal document made by one person, called the 'principal', that allows another person, the 'attorney', to do things with the principal's money, bank accounts, shares, real estate and other assets. Importantly for agents, this includes buying, selling, leasing or mortgaging the principal's house or other real estate. The power of attorney form states what the attorney is authorised to do. This authorisation can be as narrow and specific, or as general as the principal wants. Any lawful action taken by the attorney is binding on the principal.

The person appointed as attorney can be any person over the age of 18 who is able to assist the principal in dealing with their money or property. The attorney might be a relative, friend or professional advisor, but most importantly, someone that the principal trusts. An attorney differs from a guardian in that an attorney can only deal with financial matters, whereas a guardian can make personal (including medical) decisions on the principal's behalf.

CPD
2 HOUR
BREAKFAST
SEMINARS

Full 12 points!!

Wollongong

Sales/Prop Mgmt

Tues 9th Apr

Bankstown

Sales/Prop Mgmt

Fri 12th Apr

Parramatta

Sales/Prop Mgmt

Tue 16th Apr

Sydney

Sales/Prop Mgmt

Wed 17th Apr

Liverpool

Sales/Prop Mgmt

Wed 1st May

Baulkham Hills

Strata

Thu 9th May

Penrith

Sales/Prop Mgmt

Fri 24th May

Campbelltown

Sales/Prop Mgmt

Thu 30th May

Sydney

Business Broking

Fri 31st May

General or Enduring Power of Attorney?

There are two types of powers of attorney – ‘general’ and ‘enduring’ powers of attorney. Both can be created using the same form, and both can only be created by a principal who has the mental capacity. A person loses their mental capacity when they cannot manage their own affairs or cannot understand the meaning and purpose of a document that they are signing.

A general (or ordinary) power of attorney continues as long as the principal wants it to, and it can be revoked at any time so long as the principal has mental capacity. It can also last for a specified period of time, such as while you are overseas or in hospital. However, by law, a general power of attorney becomes void as soon as the principal dies or loses mental capacity. To make a general power of attorney only the principal’s signature is required, but it must be witnessed by a person over 18 who is not the attorney being appointed.

An enduring power of attorney is one which continues to operate after the principal has lost mental capacity. It is similar to a general power of attorney, except it has the following additional requirements.

- It must expressly state that the principal wants it to continue after they have lost mental capacity.
- The attorney must also sign the form to show that they consent to act.
- The principal’s signature must be witnessed by a ‘prescribed witness’ - a prescribed witness being a solicitor, barrister, Registrar of a Local Court, a licensed conveyancer, employee of the Public Trustee or employee of a trustee company who has completed an approved course of study.
- The prescribed witness must also sign a certificate on the form stating that they explained the enduring power of attorney to the principal and that the principal appeared to understand it.

Just because a principal appoints an attorney, the principal does not lose the right to deal with their own financial affairs or property so long as they have the mental capacity to do so.

Powers of Attorney and Real Estate Auctions

Now that you understand what a power of attorney is, let’s look at how they might operate in relation to real estate auctions.

Who might use a Power of Attorney at an Auction?

The most common type of power of attorney encountered at auctions are general powers of attorney. There are two primary reasons why a buyer might want to use a general power of attorney.

CERTIFICATE OF REGISTRATION COURSES

Coffs Harbour

(Dist Ed + 1 day tutorial)

Tue 16th Apr

Sydney

Mon 22nd – Wed 24th Apr

Newcastle

(Dist Ed + 1 day tutorial)

Tue 23rd Apr

Hurstville

Weekend Course

Sat 27th – Sun 28th Apr

Northern Beaches

(Dist Ed + 1 day tutorial)

Fri 3rd May

Baulkham Hills

Mon 6th – Wed 8th May

Gosford

(Dist Ed + 1 day tutorial)

Wed 29th May

FINANCE AND MORTGAGE BROKING COURSES

Cert IV in Finance & Mortgage Broking

Sydney

Wed 10th - Fri 12th Apr

Dip of Finance & Mort Broking Mgmt

Upgrade for existing Cert IV holders

Sydney

Thu 18th - Fri 19th Apr

Firstly, the buyer may not be able to be physically present at the auction due, for example, to them being overseas or in hospital, or physically incapacitated. If you want someone only to bid on your behalf, then a letter of authority is all that is required. However, if you require someone to be able to sign the Contract for the Sale of Land on your behalf to buy the property, then you need a power of attorney.

The second possible reason is that the buyer doesn't want to be recognised at an auction. There may be several reasons for this, including:

- The buyer is a celebrity or a well-known wealthy business person, in which case the vendor might raise the reserve or get someone to 'bid-off' against the well-known buyer to drive up the price.
- The buyer has a personal conflict with the vendor, such as an ex-husband or wife or neighbour.
- The buyer previously tried to negotiate to buy the property, so the vendor knows how much they are willing to pay
- The buyer is a developer who has bought surrounding properties and needs to buy this property as well. If the vendor recognised them they might put up the reserve price.

Signing the Bidders Record

All bidders at an auction must be registered on the Bidders Record. But what happens when the bidder is actually an attorney acting on behalf of a principal. Does the attorney need to register the name of the principal whom they are representing? The short answer is no. Clause 15(4) of the *Property, Stock and Business Agents Regulation 2003* exempts any person acting under a power of attorney from the legal requirement that a person bidding on someone else's behalf include the details of the person on whose behalf they are bidding.

So, when a buyer's agent acting under a power of attorney turns up at an auction, they only need to sign their own name on the register. This differs from a buyer's agent acting under a letter of authority, who must produce that letter at sign-in and provide details of the person they represent.

Signing the Contract

If the bidder is successful, they must immediately notify the auctioneer that he or she is acting on behalf of someone else under a power of attorney and provide the name of the principal. The attorney must provide the original power of attorney form, or a JP-certified copy, for the selling agent to inspect. It is the selling agent's responsibility to make sure these documents are produced.



Is it Time You Upgraded to Your Licence?

ACoP runs a Fast Track program which, in conjunction with Recognition of Prior Learning (RPL), 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.

Free Assessment

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

Have you visited our website? Find a complete list of the courses we offer as well as detailed course information anytime.

www.acop.edu.au

The selling agent is entitled to make a copy and pass it on to the Vendor's solicitor with the copy of the contract signed by the attorney in the name of the Purchaser. The attorney may sign the Contract for the Sale of Land for the purchase of the property if they are authorised to do so (as is usually the case).

If, however, the attorney is authorised to take further steps in the property transaction such as executing a transfer, conveyance or a deed on behalf of the client, then the power will need to be registered.

Registering a power of attorney

A power of attorney must be registered if the attorney is going to sell, mortgage, lease or otherwise deal with a principal's real estate. When registered, the power of attorney will be put on public record, so seller's agents, solicitors and conveyancers can easily check an attorney's authority to act. Powers of Attorney in NSW are registered for a fee at the Sydney Office of the Department of Lands. Anyone can lodge it for registration as long as it has the required signatures, but it cannot be posted or faxed. The Department will stamp a number on the original and return it to the principal. That number should be used by the attorney when signing documents, as it allows others to check the public records to view the power of attorney.

Remember your compliance requirements with your documentation in the execution of sales through auction. Always be careful to obtain the necessary documents when the bidder is acting under a Power of Attorney.

'Til next time,

Wishing you every success in your business ventures,

Rosy Sullivan

Director / College Principal

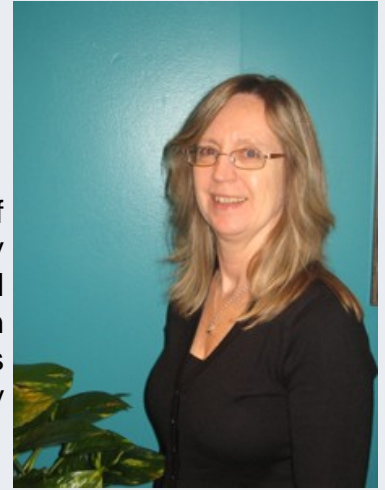
From our office.....

Over the past two weeks, the College has felt very connected with our rural cousins. Fearnie and Kelly (our Licensing Manager and Licensing Assistant) attended the Australian Livestock and Property Association (ALPA) Young Auctioneers Dinner and shared stories with the contestants, their families, judges and other members of the ALPA community. Fearnie, together with John Sullivan, attended the competition the following day at the Royal Easter Show, and were excited when both the National winner (Joe Wilks, Elders, Wagga Wagga) and the NSW State runner-up (Charlie Croker, Landmark, Goulburn) have both been students of the College. We will hear from both young men, as they have agreed to send a profile of their worklife for us to print in the next few newsletters, to give our readers a broader understanding of what Stock and Station Agents undertake on a daily basis.

Fearnie Fisher

Licencing Manager

Fearnie is a foundation staff member of the Australian College of Professionals and has been working with the business since early 2003. Fearnie is responsible for licensing and has expertise in all areas of property agency licensing. Fearnie has also specialised in individual licensing for the past five years during which time she has assisted thousands of people to acquire licences quickly, efficiently and painlessly.



If you have ever spoken to or met Fearnie, you have probably made comment to her about her unusual name. To clarify for everyone, the name Fearnie is of old Welsh origin and is pronounced as “fur–knee”. We often hear Fearnie clarifying her name over the phone to customers – “yes, Fearnie...like the plant...”. It provides much amusement to all of the College staff when phone calls come for Fergie, Fern, Fish, Mr Fish, Farney and our personal favourite.....Barney.

Fearnie has a background in banking, and worked for the National Australia Bank for over 21 years. She worked in general banking and, during the last six years of her employment, she was seconded to head office and worked in both human resources and training. It was here that she developed her passion for supporting people to gain additional skills and knowledge to better perform in the workplace.

At a community level, Fearnie has been the P&C President at the primary and high school level for over fifteen years. She has also been the Secretary for the Hills District Netball Association and an active member of the Thornleigh Soccer Club, Thornleigh Netball Club and the Hornsby Little Athletics Association. These busy community roles, in amongst being a mother of three active children and now the doting granny of two beautiful little ones, has meant that her skills in people management have developed to a level that she now imparts to her students of the College.

As a trainer, Fearnie specialises in modules from the human resource area for all qualifications offered by the College. She provides training at the Certificate IV and Diploma level in both customer service and staff management skills. She also is the main assessor at the College in relation to the granting of Recognition of Prior Learning (RPL) and Recognition of Current Competence (RCC) for students. She works collaboratively with students to assist them to gather their evidence to be assessed for either RPL or RCC. Her ability to understand the core of job roles, and look at the transfer of competency from one industry to another is of great assistance to students throughout their assessment process.

Recently Fearnie celebrated her 10 year milestone with ACoP and is looking forward to growing with the College over the next 10 years.

Qualifications:

Diploma of Management

Certificate IV in Training and Assessment

Certificate IV in Property Services (Stock and Station)

Licensed Stock and Station Agent