



Australian College  
of Professionals

# College Chronicle

## Beneficial Interest

August 9, 2019



RTO 91513

Last month we discussed one of the types of disclosures a selling agent may have to make in the course of a sale, that is, when they may have an agent's interest in the property they are marketing. In this edition of the College Chronicle, we are going to explore what happens when the selling agent may have a beneficial interest in a property they are selling.

### **49 Restrictions on licensee obtaining beneficial interest in property**

- (1) A real estate agent who is retained by a person ("the client") as an agent for the sale of property must not obtain or be in any way concerned in obtaining a beneficial interest in the property.  
*Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.*
- (2) A real estate salesperson employed by the real estate agent must not obtain or be in any way concerned in obtaining a beneficial interest in the property.  
*Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.*

So what is a beneficial interest? Section 49 of the Act states:

- (5) Without limiting this section, each of the following is considered to constitute the obtaining of a beneficial interest in property:
  - (a) purchasing property,
  - (b) obtaining an option to purchase property,
  - (c) being granted a general power of appointment in respect of property.

However it is not just the agent themselves that is considered in this section of the legislation. It is considered that the agent obtains a beneficial interest if any of the following connected to the licensee purchase the property, obtain an option to purchase or are granted a general power of appointment in respect of the property:

- (4) Without limiting this section, a person is considered to obtain a beneficial interest in property if:
  - (a) the person or a close relative of the person obtains a beneficial interest in the property, or
  - (b) a corporation having not less than 100 members and of which the person or a close relative of the person is a member, or a subsidiary of such a corporation, obtains a beneficial interest in the property, or
  - (c) a corporation of which the person or a close relative of the person is an executive officer obtains a beneficial interest in the property, or
  - (d) the trustee of a discretionary trust of which the person or a close relative of the person is a beneficiary obtains a beneficial interest in the property, or
  - (e) a member of a firm or partnership of which the person or a close relative of the person is also a member obtains a beneficial interest in the property, or
  - (f) the person or a close relative of the person has, directly or indirectly, a right to participate in the income or profits of a business carried on for profit or gain and another person carrying on that business obtains a beneficial interest in the property.

...Continued ➤

## Continued...

So how do we use the connections and networks we have grown if we are possibly going to be considered obtaining a beneficial interest? The agent must act honestly and transparently and apply the rules set out further in section 49

- (3) A person does not contravene this section by obtaining a beneficial interest in property if:
  - (a) before the person obtains the interest, the client consents in writing in a form approved by the Secretary to the person obtaining the interest, and
  - (b) the person acts fairly and reasonably in relation to the obtaining of the interest, and
  - (c) no commission or other reward is payable to the person in relation to the transaction by which the interest is obtained, unless the client consents in writing in a form approved by the Secretary to the commission or other reward being paid.

‘Til next time, wishing you every success in your business ventures,  
 Rosy Sullivan | College Director & Principal

**80% of real estate agencies in NSW are Non-compliant!**

**If you think compliance is expensive, try the cost of non-compliance**

Visit [acop.edu.au](http://acop.edu.au) to organise a compliance check

### 4 HOUR CPD SEMINARS Full 12 points

<b>THU</b> <b>15<sup>TH</sup></b> AUG	SYDNEY CBD Real Estate Sales	<b>THU</b> <b>29<sup>TH</sup></b> AUG	SYDNEY CBD Strata Management
<b>THU</b> <b>15<sup>TH</sup></b> AUG	SYDNEY CBD Property Management	<b>THU</b> <b>29<sup>TH</sup></b> AUG	PORT MACQUARIE Sales & Prop Mgmt
<b>MON</b> <b>26<sup>TH</sup></b> AUG	ALBURY Sales & Prop Mgmt	<b>FRI</b> <b>30<sup>TH</sup></b> AUG	SYDNEY CBD Business Broking
<b>TUE</b> <b>27<sup>TH</sup></b> AUG	WAGGA WAGGA Stock & Station	<b>TUE</b> <b>10<sup>TH</sup></b> SEP	ORANGE Sales & Prop Mgmt
<b>TUE</b> <b>27<sup>TH</sup></b> AUG	WAGGA WAGGA Sales & Prop Mgmt	<b>TUE</b> <b>10<sup>TH</sup></b> SEP	TAREE Sales & Prop Mgmt

### 2 HOUR CPD SEMINARS (8am - 10am unless specified otherwise). Full 12 points, Pre-reading required

<b>MON</b> <b>12<sup>TH</sup></b> AUG	BALLINA Sales & Prop Mgmt (webinar)	<b>FRI</b> <b>13<sup>TH</sup></b> SEP	PENRITH Sales & Prop Mgmt
<b>TUE</b> <b>20<sup>TH</sup></b> AUG	PARRAMATTA Sales & Prop Mgmt	<b>MON</b> <b>16<sup>TH</sup></b> SEP	GOSFORD Sales & Prop Mgmt
<b>FRI</b> <b>6<sup>TH</sup></b> SEP	CASTLE HILL Sales & Prop Mgmt	<b>THU</b> <b>19<sup>TH</sup></b> SEP	PARRAMATTA Sales & Prop Mgmt



## From the office

There we have it, the end of another fabulous fortnight here at ACOP. The last two weeks leading up to this awesome Friday vibe we have had a number of courses with great students. Kick starting the fortnight was our Certificate of Registration program in Parramatta where we had a great opportunity to welcome fresh faces into the property industry. Our trainers have also visited Parramatta, Kogarah, Dee Why, Bankstown, Newcastle and back to the CBD to provide many eager students with our CPD seminars and yes, they packed extra layers as Sydney has recently copped quite a cold front these past few days.

Amongst our CPD seminars, the College has been buckling down with training. Many students have been completing their licence studies with the end of the year fast approaching. Over the past fortnight, we held the Staff Management course followed by the Trust Accounting course. Now let me tell you, we also experienced the tip of the ACOP iceberg as we held our Stock and Station Agency Practices course. This course is on offer to students who are interested in obtaining their licence to sell rural land as well as livestock and it's always refreshing to meet students who have travelled a vast distance to attend our courses. Ending a great two weeks of training here at ACOP we had some of the familiar faces from our Certificate of Registration course return to attend the Property Management course. This ran alongside those who had already completed their real estate licence return to add on Business Broking by attending our Business Broking Agency Practices.

As you may know, generally I reserve this section for editorial about ACOP cake eating, but this time around it's a little more special. This year I, the phantom writer of this column have just completed my second year of Dry July. I wanted to take this moment to thank the team here at ACOP for their donations and moral support whilst I participated in such an amazing cause which I hold close to my heart. We raised above the goal amount and I couldn't have done it without so much support - so thank you again. Above all, we would also like to say what a great job Megan Sullivan –our Training Manager has done with raising funds and awareness for organ and tissue donating. Last weekend, Megan was involved with Wyoming Football club who hosted a charity day for Zaidee's Rainbow Foundation. The day was full of joy and reminiscing of good times with a friend that they lost earlier in the year – they held raffles, prizes and auctions in memory of those who had been directly affected. We are all so proud of Megan and those involved for providing knowledge and insight for an amazing cause.

We hope you, our students and readers, reached some of your goals this fortnight.

## CERTIFICATE OF REGISTRATION COURSES

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

<b>MON 26<sup>TH</sup></b> <b>WED 28<sup>TH</sup> AUG</b>	PORT MACQUARIE
<b>MON 26<sup>TH</sup></b> <b>WED 28<sup>TH</sup> AUG</b>	PARRAMATTA
<b>MON 9<sup>TH</sup></b> <b>WED 11<sup>TH</sup> SEP</b>	SYDNEY CBD
<b>SAT 14<sup>TH</sup></b> <b>SUN 15<sup>TH</sup> SEP</b>	SYDNEY CBD (ONLINE + WEEKEND WORKSHOP)

## FINANCE & MORTGAGE BROKING COURSES

Units taken from nationally accredited training qualifications from the FNS Financial Services Training Package.

<b>MON 26<sup>TH</sup></b> <b>WED 28<sup>TH</sup> AUG</b>	SYDNEY CBD Certificate IV in Finance & Mortgage Broking
<b>26<sup>TH</sup>-28<sup>TH</sup> AUG</b> <b>&amp;</b> <b>2<sup>ND</sup>-3<sup>RD</sup> SEP</b>	SYDNEY CBD Diploma of Finance & Mortgage Broking Management <i>(Upgrade Program - Must hold Certificate IV in Finance &amp; Mortgage Broking)</i>

# PROPERTY LICENCE COURSES

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

18 <sup>TH</sup> - 19 <sup>TH</sup> SEP	Staff Management SYDNEY CBD	16 <sup>TH</sup> - 17 <sup>TH</sup> SEP	Financial Management SYDNEY CBD
19 <sup>TH</sup> - 22 <sup>ND</sup> AUG	Sales for Real Estate SYDNEY CBD		
21 <sup>ST</sup> - 25 <sup>TH</sup> OCT	Stock & Station Agency Practices SYDNEY CBD	FRI 27 <sup>TH</sup> SEP	Trust Accounting + Insurance (Strata) SYDNEY CBD
23 <sup>RD</sup> - 26 <sup>TH</sup> SEP	Strata Management Agency Practices SYDNEY CBD	2 <sup>ND</sup> - 4 <sup>TH</sup> SEP	Trust Accounting SYDNEY CBD
FRI 23 <sup>RD</sup> AUG	Real Estate Auctioneer Accreditation SYDNEY CBD	5 <sup>TH</sup> - 6 <sup>TH</sup> SEP	Property Management SYDNEY CBD

View our course calendar for all course details.

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