



Service of Documents...get it right

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Service of Documents...get it right

Businesses need to keep up-to-date with any and all new technology that becomes available to them, or they will fade into the past.

The majority of today's customers want electronic documentation as a business, we all need to meet that need. In saying that, an agent and their agency is bound by the legislative constraints of the Property and Stock Agents Act and the Property and Stock Agents Regulation, so let's look at the impact of electronic service of documents.

Service of Agency Agreements is one of the areas that an agent must ensure meets the legislative requirements of the Act and Regulation for the protection of the agent and their commission.

We often get asked by agents if they can serve their agency agreements through a number of new methods of communication including applications (apps) such as wechat and whatsapp and utilise the online signing platforms such as docusign or Adobe Acrobat Sign. To answer this question we must look at the Property and Stock Agents Regulation at clause 10:

10 SERVICE OF AGENCY AGREEMENTS – THE ACT, S 55

1. For the Act, section 55(3), each of the following methods of service is prescribed as a means by which a

copy of an agency agreement may be served on an individual:

- a. delivering it personally to the individual,
- b. leaving it at the individual's place of residence, or at an address provided in the agency agreement as the individual's address for service, with a person:
 - i. who apparently resides there, and
 - ii. who has apparently reached the age of 16 years,
- c. sending it by post to the individual:
 - i. at the individual's residential address or postal address as disclosed in the agency agreement, or
 - ii. at an address provided in the agency agreement as the individual's address for service,
- d. transmitting it electronically to an email address provided in the agency agreement as the individual's address for electronic service.

Specifically, the regulations state that electronic service is to be to an email address provided in the agency agreement. Whilst it does not specify that the agency agreement must be sent BY email, it does specify that it is to be sent TO an email address.

In using applications like wechat and whatsapp, the agent would be sending the agency agreement via a phone number and not necessarily an email address. As such it would not fit within the definition of acceptable service as per the Property and Stock Agents Regulation.

If an agent has served their agreement through a phone-based app and not an email-based one, they may face significant issues should there be a claim from a vendor or landlord against the commission payable to the agent.

An even more practical impact of the electronic service of documents is that when does an electronically served and signed document become valid. So if you are using an electronic signing platform, make sure that you date the document for the commencement of service provision on the day you make it and send to your client. DO NOT, I repeat, DO NOT sign the document at this stage. When the client returns the document and they have signed the document –

now is the time for you as the agent to sign the document, and then return a fully executed version of the document to your client. NOW you have a valid agreement.

So we see that the Act and the Regulation are very clear in relation to the service of an agency agreement upon a property owner. However, continued communication with clients does not have prescriptive legislation about how this must be undertaken. So if an agent wishes to establish a 'chat group' with a client for continued communication – this would not breach any legislation. It is always best to ask your client their preferred method of communication, and who to include in the chat group, so that you meet your requirement under the Supervision Guidelines to establish a communication channel with all clients. And such appropriate use of technology can only be a good thing.

[Rosy Sullivan](#)
[Director | College Principal](#)

From the office

The end and the beginning of the financial years brought plenty of calls to the College about trust accounts and audits and also finalisation of training to meet traineeship deadlines. Our trainers have been busy with a Certificate of Registration entry level program with some lovely new recruits to the property industry. We were all spoiled by one of the students who brought in Sangak bread from her Persian bakery, Kian Bread in Baulkham Hills – it was soooo enjoyed by students and ACOP staff alike. We celebrated the new financial year with a lunch – and whilst the food was fabulous, the story around the online ordering which went to a restaurant in Bella Vista instead of the city and the ensuing tears and tragedy from one staff member (who will remain nameless) gave us the highest level of entertainment in a long time. The past fortnight has also seen students participating in an auctioneering accreditation program and well as Rosemary travelling to Port Stephens for an intensive training day with a very busy property management department.

It's that time of the year when everyone needs a little break from the winter chills and we've had Michelle and Jorja on holiday in Bali for the past week and other team members taking it in turn to get refreshed for the second half of the year. For those of our readers who like to hear about what cakes we have indulged in over the past fortnight – there has been none – can you believe it. But bring on World Chocolate Day and watch our socials for how we celebrate all things chocolatey.

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