

Leverage News



Delivery



Edition: 24th February 2012

Section 55(1)(a) of the Property Stock and Business Agents Act 2002, states that an agent is not entitled to a commission unless the Licensee serves a copy of the agency agreement upon the Principal 48 hours after the agency agreement has been signed. There are some exemptions under Section 55 that allows the courts to extend these periods, but the courts have not done so thus far.

One of the most controversial things that comes up in training regularly is how this should be served. Obviously, the best approach is to have 2 copies when the Principal signs it. One you can leave with them and one you can take away. In some circumstances however this is not able to be done.

The Act allows for the agency agreement to be served in 2 ways:

- By hand; or
- By facsimile

The legislation does not however mention anything about email. The Electronic Transaction Act 2005 does permit for contracts to be sent electronically. It is impossible to tell how the courts or tribunals would consider balancing this inconsistency.

Because the punishment is so severe with section 55, that is, you lose all your commission, I take the most conservative view point. We believe the only 2 methods of service are by hand or by facsimile. Clients do not have a facsimile machine at home. Therefore, you should ensure that the agency agreement is served by hand.

We had a client who served an agency agreement 72 hours after signature. He went to court and lost his commission. This commission amounted to \$130,000.

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I made a comment in a course last week where I said that service by hand is required. What I meant was that, it is only required because most people don't have facsimile machines.

International transactions are much harder. Obviously, international facsimiles do work. We believe that in some cases you may need to email the agency agreement back or have an email signature to put it on the market. This is a risk you will probably have to take. It is arguable that, the concept of service under section 55 has discretion for a reasonable delay. International transport of contracts across the sea would seemingly be a 'reasonable excuse' for serving it after 48 hours. We would suggest that with international clients, fax first, email second and always serve an original copy by post.

**Cheers,
Bailey Compton
and The team at ACP/Leverage!**



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