



14 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

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Dear Sir / Madam

### **SUBMISSION REGARDING THE PROPERTY OCCUPATIONS BILL 2013**

This Submission relates specifically to **Assignment of Appointments – Section 113 (2)**

It is our opinion and view that Section 113 (2) of the Property Occupations Bill 2013 should be reviewed for the following reason and explanation:

Section 113 (2) specifies that the assignee is only required to give the Client a notice of the assignment within 14 days **AFTER** the assignment. This provision is not considered to be in the best interests of the Consumer or the Agents involved in the Assignment of the Appointment.

#### **EXPECTED IMPACT OF THE PROPOSED LEGISLATION**

Section 133 (2) - This clause will mean that the Client will be left in the dark without knowledge of the change in their Agent until **AFTER** the assignment of the Appointment has occurred when the assignee has given the Client notice.

This will result in conflict and disputes between the Client / Consumer and the Agents involved. An example follows.

Example 1: Without the Client's knowledge, the assignment of the Appointment occurs on 1 May. Before the Client receives the assignee's written notice of the assignment, on 3 May, the Client calls their original Agent about a matter related to their property. The Client is surprised and very annoyed to hear that that Agent no longer manages their property, has not been advised before the assignment and that the other Agent which now manages the property is not an Agent they would ever have agreed to manage their property. The Client is angry that there has been no consultation or advice about the proposed change by the original Agent BEFORE the assignment occurred.

Example 2: Without the Client's knowledge, the assignment of the Appointment occurs on 1 May. Before the Client receives the assignee's written notice of the assignment, on 3 May, the Client calls or visits their original Agent about a matter related to their property. The Client is shocked to find that the Agent's phone is disconnected and the Agent's office premises are now vacant. The Client has no way of knowing what has happened to their property, tenant, rent monies, file records, and where to locate the Agent who they appointed to manage their property. What do they do? Most likely the only option available to the Client is to call the Office of Fair Trading to lodge a complaint about the Agent.

In both of the above examples, the Client will also be upset that they have wasted their money in phone calls and their time only to discover an assignment of the original Appointment has occurred without any prior advice being given to them and that their personal details including bank account information, contact details and rental monies held in trust have been handed over to an unknown Company without their express consent to do so first.

The Client may terminate the Appointment of the assignment but only after it has been assigned. This will cause aggravation by not only the Client, but also the assignee that has paid a fair price to the original Agent for the assigned Appointment on 1 May.

Even if the Client does receive a Notice from the assignee within 14 days after the assignment, they will be confused and upset to find the Notice is given by an Agent they have had no prior relationship with. The Client will expect that the advice of the proposed assignment would be given by the original Agent appointed.

Without a review of Section 133 (2) to take into account this Submission, it will most likely result in the following:

- Significantly high numbers of very unhappy Consumers who will be upset and confused by the lack of courtesy and communication from their original Agent before an assignment occurs.
- An increased number of complaints by Consumers to the Office of Fair Trading would likely occur.
- The Agent assigning the Appointments will also be affected and set to lose a lot of money in the transfer of their Rent Roll to the assignee as the upset Clients terminate the assigned Appointment.
- In turn the assignee will lose a lot of business which they have just paid for the assigned Appointments.
- A flow on effect will occur if additional staff has been employed by the assignee to manage the assigned Appointments. If the Clients terminate the assigned Appointment, the new staff will not be required and be terminated. This will cause duress and expense to all parties to the employment.

To summarise, in practice, the proposed Section 133 (2) does not work and is not in the best interests of any party involved in the assignment process.

## ALTERNATIVE LEGISLATION RECOMMENDATION

In consideration of the dilemmas caused by the proposed S 113 (2) as outlined above, it is recommended that this section be reviewed and changed to reflect the following:

- The Agent who holds the original Appointment under section 102 must give each Client 14 days written notice of the proposed assignment **prior** to the assignment.
- The Client may revoke the assignment by giving notice in writing to the Agent **prior** to the proposed assignment. If the Client Agent does not give notice to revoke the assignment **prior** to the advised proposed assignment, the Appointment may be assigned.

Such consideration in the Legislation will help to ensure transparency for the Consumer and Agents thus reducing risk to all parties involved in this process.

## SUBMISSION QUALIFICATION

- This Submission is based on the past 10 years of experience as a leading and REIQ Award winning Real Estate Agency Broker which specialises in the sale of Rent Rolls in Queensland.
- Real Estate Dynamics is involved in approximately 70% to 80% of the Rent Roll Sales in Queensland and have transacted hundreds of Rent Rolls to date. Based on our high level of involvement with the assignments and transferring of Appointments, I believe we are qualified to express the views as outlined in this Submission.
- Please refer to the attached Profile for your reference.

Other background information and issues also relevant to this Submission follow:

- On the sale of a Rent Roll there are three parties involved: the Agent who is selling their Rent Roll business, the Agent who is buying the Rent Roll business and the Client who has appointed the original Agent to manage their property. Transparency between the parties is important to all.
- At the time of appointing an Agent to manage their Property the Client will have researched and selected the Agent of their choice to manage their Property effectively. So when their current Agent sends an letter to them telling them that they are exercising the right under the Assignment of Appointment clause, which is the box they ticked on the Appointment form years ago and this other Agent that they have just sold to will be their new Managing Agent, some Clients become annoyed and will not transfer over to the new Agent.
- When selling a Rent Roll, Real Estate Dynamics always advise the selling Agent to send out a new Appointment form for the Client to sign or a letter for the Client to sign their agreement to the Assignment of the current Appointment and return the advice to the selling Agent before the change in Agents occurs. The selling Agent sends to the Client an introduction letter from the new Agent with information about the new Agent and the services they will provide and confirm that the Appointment is on the same terms. This is important information that the consumer needs before the change of Agents occur.
- After receiving the notice from their Agent, the Client usually understands the reason for the change of Agent and the process involved and signs the new Appointment form or agrees to the assignment of the Appointment and returns it to their Agent before the date when the change of Agent will occur.
- About 97% of Agent's Appointment forms that our company sees are considered to be not compliant. This is due to the current complexity of requirements for its completion to comply with Legislation and the fact that many Agents complete the Appointment form incorrectly. This will be easier once the proposed Bill simplifies the requirements for the proposed new Appointment forms. However for all existing Appointment forms, it is not possible to assign those that are non-compliant. In this case a new Appointment form that is compliant is the only option.
- Financial Institutions which lend on Rent Rolls will rarely fund a Rent Roll which is based on assignment of the Appointment. They are requiring the selling Agent to obtain a new Appointment form specifying the buying Agent and their\_Company details and for the new Appointment form to be signed by the Client.
- There is a very poor success rate of Rent Rolls being transferred between Agents by way of assignment with some cases resulting in up to 50% of the selling Agent's Rent Roll lost during the transaction simply due to the lack of consultation and communication by the selling Agent with the Client in regards to the proposed assignment **BEFORE** the assignment occurs.

I recommend that the Legal Affairs and Community Safety Committee review Section 133 (2) taking into consideration the issues and points outlined in this Submission.

If you would like to discuss any aspect of this Submission, I would be delighted to assist. My contact details:

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Yours faithfully  
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