Have you been in the situation where a Contract for Sale has been terminated and both the Buyer and the Seller are claiming an entitlement to monies held in Trust? What do you do?

As you are aware, under the Agents Act 2003 (ACT) (“the Act”), a Licensed Agent commits an offence if they deal with Trust money otherwise than as directed by the person for whom the money is held. The maximum penalty being $15,000 for individuals and $75,000 for a corporation. Records must be kept stating the material details of every transaction the Agent conducts.

Failure to comply with the record keeping requirements may result in a maximum penalty of $7,500 for individuals and $37,500 for a corporation. In addition to monetary fines, the Agent, who will also be in breach of the rules of conduct, may have their licence cancelled or suspended.

So, what do you do if you have both the Buyer and Seller providing writing instructions to disburse the monies to them?

Agents are at risk of breaching their Trust account requirements if they disburse money contrary to the directions of the parties. If the parties cannot agree on the distribution of the funds, to ensure compliance with the Act, an Agent must hold the funds until agreement is made or court proceedings are commenced. If court proceedings are commenced, the money may be paid into the court, to be held until a decision is made. If court proceedings are not commenced by the parties, one option the Agent may consider is to make its own originating application to the court as a third party under rule 35(1)(a) of the Court Procedure Rules 2006 (ACT). The originating application would be a request to pay the disputed Trust monies to the court where they would be held until the dispute is resolved between the Seller and the Buyer.

So what should you do?

If you consider that there may be a dispute in relation to the money you hold in Trust, keep the lines of communication open. If the Contract is subsequently terminated and the parties cannot agree on how it is to be disbursed, a letter to both advising that you may seek the assistance of the courts may be enough to push the parties to come to an agreement. Until you receive written confirmation from both parties that convey the same instructions, do not disburse the Trust monies. Seek legal advice if you consider the dispute is likely to require court assistance or if you are not certain what to do.
BAL LAWYERS ARE PROUD TO BE A CORPORATE PARTNER OF REIACT

CONTACT OUR TEAM OF PROFESSIONALS FOR ALL OF YOUR PROPERTY NEEDS

www.ballawyers.com.au