Monday Contemplation No 40
Does the agent or the agency hold the mandate? Part 2

In last week's post, I discussed some of the important nuances between the common law of agency and the law relating to real estate agency. **In our common law**, the client gives a mandate to the agent. However, **in real estate**, the client gives a mandate to the agency (being the agent for the purposes of the mandate) and not the agent (being the PP who will do the work). Hence, the legal relationship is between the client and the agency and not the agent (PP).

What happens if the property practitioner (PP), let's call him John, that has been working with the client leaves the agency that they are currently working at and goes to another agency?

There are a number of issues to be addressed:

1. Remember, the **client signs a mandate with the agency and not the PP**, being John. This means that it is the agency that has been mandated to undertake the work to sell or let the property. This means that, should John leave the agency, John does not take the mandate with them as their own stock. The mandate remains with the agency.

2. Similarly, the **client cannot decide to cancel or transfer the mandate from Agency A to Agency B**. The client is not in a position to say to the principal of Agency A, that they only wish to deal with John, who has now left. Of course, it would be up to the principal of Agency A to ensure that the mandate is properly serviced in order to get the property sold or let.

3. It is useful at this point, to **refer to the Code of Conduct**. Let us say that John had been dealing with a particular potential buyer, let's call them Sarah. Sarah finds out that John has now moved to Agency B and wishes to put in an offer to purchase the property. It is of no concern to Sarah that John is now with a different agency.

   Clause 34.6.3 of the Code of Conduct says, that no agent shall introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that:

   - **34.6.3.1** such person has already been introduced to such property or the seller or lessor thereof by another estate agent; and
   - **34.6.3.2** that there is a likelihood that his client may have to pay commission to such other estate agent, or to more than one estate agent, should the sale or lease be concluded through his intervention.

4. Given that John initially dealt with Sarah when working at Agency A, it would be **John's ethical responsibility to refer Sarah back to Agency A**, as Agency A holds the mandate.

5. **It WOULD NOT BE CORRECT** for John to approach Agency A and say that he has a buyer and that Agency A must entertain a commission split. It would also not be correct for John to approach the seller and say that Agency A is being unreasonable by not agreeing to a commission split. John needs to understand that the stock belongs to

Agency A and not Agency B.

6. Likewise, if the principal of Agency B understands the Code of Conduct and is well educated around these matters, then they would also understand, that it is a PP's responsibility to not expose a client to a commission dispute. Stock belonging to Agency A is not available to poach.

7. John needs to understand that when he leaves Agency A, he doesn't take his desk and chair with him. Just the same, **the mandates that Agency A has signed belong to Agency A** and John leaves them behind. That is part of the risk that John takes when leaving Agency A and going to Agency B.

Ethics and behaving in an ethical manner is paramount in our industry and profession. Poor and unethical behaviour is what gives property practitioners a bad name. Stick to your lane and don't poach stock that belongs to another practitioner or agency!

Next week <u>I will discuss what happens to a PP's commission if they leave the agency</u> where they were working?
We will also answer the question, **Is a property practitioner an agent or an employee** and what does this distinction make any difference?