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VALIDITY OF ORAL MANDATES

A mandate is the authorisation to act or cause something to be done that is given to a representative. A mandate can be written or oral, as there is no legal requirement that a mandate must be reduced to writing, although it is advisable.

Oral mandates can cause difficulties, as it is very hard to prove what the extent of the oral agreement was. Irrespective of how informal the communications have been, it is always advised that a mandate to sell a seller's property, must be reduced to writing.

In the case of *Pather v Wakefields Real Estate* an agent at Wakefields Real Estate entered into an oral agreement with Mr Pather in terms of which they agreed that should the agent produce a willing and able purchaser for Mr Pather's property and that the agency would receive commission of 7.5% (plus VAT) based on the purchase price. Mr Pather knew the agent as they lived in the same street, and he knew she worked as an estate agent. The agent then introduced a potential purchaser to the property. Mr Pather and the potential purchaser thereafter signed an offer to purchase, excluding any commission to the agent.

Mr Pather denied giving any mandate to the agent.

The court held that Mr Pather knew that she was an estate agent and he also knew that estate agents charge commission for performing the task of finding a willing and able purchaser. It appeared that Mr Pather reasoned that as long as the mandate was not in writing, commission would not become due and payable.

The agent established the necessary facts to show that she was the effective cause of the sale and was therefore entitled to the commission. Mr Pather's appeal was dismissed.

The conclusion is that oral mandates are valid, but they are very risky.