

When a tenanted property is on the market

The whisper of a tenanted property coming on the market is often the cause of much stress for both the managing agent and tenant however with a systematic approach to handling the process, it should be smooth sailing.



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Property owners/lessors often require multiple appraisals. Sometimes they deliberately avoid the sales department of their managing agent for a variety of reasons and call in outside agents. Therefore it is imperative the channels of communication between all parties are free-flowing to ensure the correct forms are given by each agent to tenant.

STEP 1 – APPRAISAL OF PROPERTY

Hopefully the lessor will inform the managing agent of their intentions to invite alternate salespeople to appraise the property however this doesn't always happen with some lessors going straight to the salesperson. This can lead to a series of issues as the managing agent will be required to either:

- Gain mutual agreement of tenant for the entry of the appraising secondary agent; or
- Issue an Entry Notice Form 9. In this instance, the managing agent issues *Form 9 Entry Notices*.

Appraising agents cannot enter the property until permission is sought from the tenant. As a managing agent, you would want to be assured the tenants have been appropriately informed before the appraising agent gains entry as you will be the one held responsible by the tenant if the entry is unlawful.

STEP 2 – LISTING PROPERTY FOR SALE

The selling agent must ensure a Form 22A is signed by the property owner, even if the managing agent and selling agent are the same person (such as may be the case with onsite managers).

For best practice purposes, selling agents will often ask for a copy of the lease from the managing agent for the details required for contract preparation. Even if a copy of the lease is not forthcoming, the managing agent should provide all the details of the tenancy. This includes for example, expiry date, rental amount and any other special conditions, as this could have a



bearing on the sale. The failure of a valid Form 22A is a breach of Section 133 Appointment of Agent of the *Property Agents and Motor Dealers Act* (PAMD Act) and incurs 200 penalty units (one penalty unit = \$110).

STEP 3 – TENANT INFORMED OF PENDING SALE VIA FORM 10

Once the 22A has been signed by the lessor, it is required that the tenant is officially notified of the property being on the market. This is done by the issuing of a Form 10 Notice of lessor's intention to sell premises under Section 198 of the *Residential Tenancies and Rooming Accommodation Act* (RTRA Act). Please ensure you are using the latest version of Form 10 (November 2012 onwards) as the new form requires both the selling agent and the managing agent to complete certain sections before being given to the tenant.

Often the selling agent will complete their section and then pass to the

managing agent for completion. The PAMD Act does not dictate who must deliver the notice to the tenant, however the 22A - General Terms and Conditions S8 states:

1. The Agent must immediately give written notice of the appointment to any managing agent of the property; and
2. The managing agent must immediately give the tenant notice of the appointment of the Agent to sell the Property.

STEP 4 – BE CONSULTATIVE. WORK WITH THE TENANT, NOT AT THEM

You need to form a trusting and respectful relationship with the tenants from the beginning as they can easily "kill" a sale by being uncooperative and give much grief to the managing agent. Tenants often panic when their property goes on the market. As the managing agent, they will often look to you for guidance of their rights or at least to have their

options explained to them. Many are fearful that they will be "kicked out" and become homeless.

Reassure them that they cannot be "evicted" and they have the right to remain in the property until the expiry of their lease if they are on a fixed tenancy. If periodic, then they must be given four weeks' written notice to leave or they can give two weeks' written notice of their intention to vacate. Also explain they are to be given an entry notice and 24 hours' notice before each inspection.

A property manager should always discuss the issuing of consent forms with the selling agent.

Normally, the selling agent will gain the tenants consent for the conducting of Open For Inspections (OFI), use of internal photography, and conducting an auction by the use of the Realworks Tenant Consent as best practice.

OFI consent form – grants the agent permission to conduct OFI's for the purpose of showing the property to prospective buyers;



Internal photography – can take and use internal photos of the property showing the tenants belongings and possessions for marketing purposes. *Note – should an agent refuse to remove unauthorised photos, the tenant can issue the lessor/managing agent with Notice to remedy breach (Form 11); and*

Onsite auction – allows for an auction to be held on site.

STEP 5 – BUYER INSPECTIONS

An Entry Notice Form 9 must be supplied to the tenant. Best practice is to confirm with the tenant that they have received the notice either by phone/email. Always thank the tenant after each inspection. *Note - should a tenant refuse entry and a lawful Form 9 entry notice rules are followed, the agent may need to go to RTA Dispute Resolution then if need be, QCAT, for determination. This will delay selling time, but cannot prevent it. The property owner is entitled to sell and the tenant must act with “reasonableness”.*

STEP 6 – SALE OF PROPERTY

Unfortunately it is common that salespersons arrange for a settlement date for a tenanted property without consideration to the processes which need to occur. If there is a fixed

tenancy in place, then the tenant has the right to remain in the property until lease expiry. If the property is being sold with “vacant possession” and the tenant is on a periodic agreement, then the timeline leading up to settlement is crucial.

An ideal scenario would unfold as follows:

- Day 1 Contract (sale date).
- Day 2 Meet managing agent and inform them of the contract so they can prepare the necessary notices and documentation.
- Day 15 Contract now unconditional. Now that it can be confirmed the sale is definitely proceeding, the tenant must be asked to vacate. Tenant issued with Notice to leave Form 12 (four weeks) plus the allowance of two days delivery service.
- Day 45 Four weeks is up for the tenants to vacate. Hopefully tenants will vacate.
- Day 47 Property manager conducts exit report, and may find property requires cleaning, repairs, etc. Buyer may wish to conduct pre-settlement inspection. This all takes time, which you may not have if settlement is due.

Day 48 Settlement takes place with tenants having vacated. The buyer is happy with property and the condition in which it has been left.

Ideally, property managers should encourage salespeople to work towards a 60-day settlement in the event of time delays in achieving vacant possession for settlement.

WARNING

If a verbal agreement is made by the tenant to leave early, do not treat the sale as “vacant possession”. Agreement must be sought in writing from the lessor that the tenant can break the lease without penalty. The tenant must then issue the managing agent with an intention to leave Form 13. The salesperson is required to complete the contract still with the fixed tenancy details in it.

The tenant has the right to give two weeks’ notice of Intention to Leave (Form 13) without grounds if they are on a periodic lease.

Should the new owner intend to keep the property as an investment and has appointed your agency to manage it, ensure that you have a 20A. You cannot act without it.

In summary, it is clear that communication is the key to this process being as pain-free and mutually beneficial as possible. 