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You can't ignore tenants' rights when selling

There has been a recent spate of worrying complaints about selling agents' cowboy behaviour when selling tenanted residences.

In a nutshell, a tenant's fundamental right to quiet enjoyment of their home is simply being ignored by over eager agents hell-bent on making a sale to secure their commission.

What is the right to quiet enjoyment? It is having undisturbed possession of their home with the assurance that their landlord, and the landlord's agent, won't interfere with that, otherwise than as allowed by the Residential Tenancies Act.

Complaints received at the REIV indicate that there appears to be class of salesperson who has never heard of the RTA, let alone quiet enjoyment, and considers a tenant to be an inconvenience to earning their living.

This person organises opens without prior tenant consultation and uses their agency's duplicate key to conduct unannounced private inspections while the tenant is at work, thoughtfully leaving their business card on the kitchen bench with a hurriedly penned note.

Of course, this appalling and illegal behaviour can be sheeted home to the salesperson's officer in effective control, who obviously has no procedures in place to ensure his or her sales team is aware of and puts into practice the requirements of the RTA, when it comes to selling a rented residence.

What does the RTA demand of a sales team and its officer in effective control? A thorough knowledge of its sections 85, 86, 87 and 88.

Section 85(a) applies to tenant consents. A salesperson and a tenant can agree to opens and private inspections at any time, but the open or inspection must occur within a week of the tenant's consenting to it. Under this scenario, asking for and receiving consents may be an on-going feature of a sale campaign.

Section 85(b) applies in situations where a tenant's consent is not sought or, if sought, is not forthcoming.

This is where section 86 comes into play. It sets out a variety of situations in which a right of entry to rented residential property may be exercised. One of these arises when the property is going to be sold and entry is required to allow prospective buyers to inspect it.

Before an open or private inspection takes place, a tenant must be given notice of it. This is where section 88 comes in.

The section sets out the notice requirements: it must be in writing and must say why the

agent wants to enter. It has to be given by post or given personally to the tenant between 8.00 am and 6.00 pm.

The notice must be in the hands of the tenant at least one day, at the very minimum, before the open or private inspection takes place.

If the procedure has been followed, the open or private inspection can occur between 8.00 am and 6.00 pm on any day except a public holiday.

Finally, the sales team needs to be both familiar with and comply with section 87.

The open or private inspection must be conducted in a reasonable manner and not continue any longer than necessary to achieve their purpose. So far as opens are concerned, the sales team should observe industry norms in setting up, conducting and concluding an open.

As well as observing RTA requirements, the sales team must observe professional etiquette. It is found in the REIV Rules of Practice 2006.

If the managing agent and the selling agent are not one and the same, the selling agent must give the managing agent written notice of his or her appointment within two business days of being appointed, or of becoming aware of the existence of the managing agent.

Agents are to co-operate with one another so the sale is completed in the time frame of the landlord's contract.

Members with queries should call (03) 9205 6617 or send a short email to plowenstern@reiv.com.au. This service is only available to individual REIV Members.