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Queensland's new real estate law: What it means for you



Queensland's new real estate law came into effect on 1 December 2014, and with it some significant changes. *Despina Priala* explains what they are, and what they mean to you as property investors

Queensland has embarked on a new era for property and contracts. On 1 December 2014 the new Property Occupations Act (POA) came into play, making some dramatic changes. These changes are expected to reform and streamline the way contracts are formed, and will simplify the inevitable procedures that always accompany the formation of contracts.

The changes also mark a new era for real estate agents with the removal of the cap on commissions, and they're no longer obliged to disclose to buyers their agreed commissions. It has been more than 10 years since the last reforms in Queensland.

The Property Occupations Act

Selling property generally

The main changes are:

- PAMD Form 30C and the BCCM Form 14 Information Statement no longer apply to residential contracts.
- 30C and BCCM Form 14 have been replaced with the following paragraph to be inserted above the signing provisions in the contract:



“This contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period. It is recommended the Buyer obtains an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.”

- The new Real Estate Institute of Queensland (REIQ) contracts have the above paragraph built in. However, if another form of contract is being used and this paragraph is not included, buyers will no longer have the right to terminate; only a penalty for the seller will apply.
- The new definition of “residential property” is simple and general: “... property that is intended to be used for residential purposes ...”
- There is no longer any requirement for agents to disclose their commission to buyers. In other words, no PAMD Form 27c is required to be given to buyers; however, the disclosure to be given in 27c is still required.

- The cap on commission for agents has been removed. Only time will tell if this will mean more or less for the agents.

Selling off the plan – Land Sales Act

- Deposits can be up to 20% of the purchase price.
- New requirements exist for disclosure plans.
- The time period for providing a further statement when a disclosure statement is to be varied is now 21 days prior to settlement.
- Off-the-plan contracts for a proposed community title scheme can now provide a sunset date of five and a half years from the date the contract is entered into. The phrase “contract entered into” means when the buyer signs, not when the seller accepts.

Transitional provisions

- PAMDA will apply to all contracts for the sale of residential property that exist prior to 1 December 2014, and
- POA will apply to all contracts for the sale of property intended to be used for residential purposes entered into on or after 1 December 2014.



- Any rights of termination for contracts entered into prior to 1 December 2014 (for example a failure to comply with s149 or s226 for vacant land sales – a requirement that will not apply under the POA) will continue to be subject to the provisions of PAMDA, notwithstanding the introduction of POA.

New form of REIQ contract

- From 1 December 2014, parties should use the new form of REIQ contract for residential property that is now available.
- The new form of contract contains certain changes, including:
 - Notification by email – these notices are not “given” until they are capable of being retrieved by the addressee at the nominated email address. Under the Electronic Transactions Act there is a presumption that this means when the email reaches the addressee’s electronic address
 - New disclosure regarding title encumbrances – it is not sufficient to state “refer to title” or “search will reveal”. Any encumbrances that will remain after settlement must be disclosed (for example statutory easements)
 - “Business day” is now taken to exclude the period 27 December to 31 December inclusive
 - There is a requirement for the seller to hand over the keys to the buyer at settlement if the buyer specifically requests this at least two business days before settlement

Contracts not included

- Contract formed on auction
- Contract entered into by 5pm on the second clear business day after auction with a registered bidder
- Contract with a buyer that is a publicly listed company
- Contract with a buyer purchasing at least three lots at the same time, whether or not all three lots are contained in one contract
- Contract resulting from an option if the parties are the same in option agreement to contract

Cooling-off provisions

- A solicitor is not deemed to be an agent for the buyer.
- The cooling-off period commences when the buyer receives the contract, therefore it is always prudent practice to send a copy of the contract to the buyer as well as the buyer’s solicitor to commence the cooling-off period.
- If a buyer wishes to waive or shorten a cooling-off period, they simply give written notice to the seller – PAMD Form 32A is no longer required.
- If a buyer is to waive the cooling-off period, it must be done prior to the buyer entering into the contract. Therefore, any conditions contained in a contract of sale providing that a buyer can waive the cooling-off period are not effective. However, the buyer can shorten this period after entering the contract.
- If a buyer wishes to terminate during the cooling-off period, the requirement for the buyer to refer to the section of the Act is removed.

Conjunctive agents

- Conjunctive agents are not required to provide a PAMD Form 27c
- There is no requirement for a conjunctive agent to be noted on the contract of sale. However, many insist on this because, if noted on the contract, it can be prima facie evidence that there is a listing agreement and effective cause of sale.

Agents’ commission entitlements

- The Act makes it quite clear that, where the appointment is to be a sole agency or exclusive agency, the agent must first discuss with the client the proposed term, and the client can negotiate up to 90 days, with consequences if the property is sold by someone else during this term. If the agent breaches the contract, they are not entitled to commission.
- The agent should obtain written acknowledgement from their client as to these matters discussed upfront, as a form of protection for the agent.



- Exclusive listings can now be for up to 90 days instead of 60.
- This period of 90 days can be extended but not until 14 days prior to the expiration of the term.
- There is no requirement to state when the term ends – the appointment can be terminated by giving notice to the agent.
- If the appointment form specifies that commission must be expressed both as a dollar figure and a percentage, the agent must complete both sections.
- The agent does not now need to state how the service is to be performed.

Licensing

The number of categories has been reduced from nine to three:



1. Real estate agent
2. Auctioneer
3. Resident letting agent

Property developers no longer have any licensing requirements.

A company can now hold a real estate agent’s licence without the need for a director of that company to hold a licence. As long as the company has a licensed real estate agent in charge of the business, the company can hold a licence.

Resident letting agents

- Resident letting agents can now operate more than one building complex.
- The agent must still have its registered office in one of those buildings.
- Resident letting agents are no longer required to live on site to be eligible to obtain a resident letting agent’s licence.
- However, if the terms of their management rights contract provide that they must live on site, then they must comply. Therefore, it is essential for the terms of any appointment to be checked carefully. 📌



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