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B O U T I Q U E P R O P E R T Y L A W Y E R S



CHANGES IN QUEENSLAND PROPERTY LAW



The Property Occupations Bill was recently passed by Parliament. The Bill will have dramatic changes to property law in Qld. The Bill replaces the *Property Agents and Motor Dealers Act 2000* (Qld) (“PAMDA”) and is designed to introduce a more simplified regime for residential property sales. It has been 14 years since the PAMDA was introduced in Queensland. Since then a substantial amount of litigation has ensued relating to the contract sales process. Only time will tell if this Bill indeed will live up to our expectations of a complete overhaul of some of the complexities and red tape we have seen with the contract sales process in Queensland over the last few years.

I have provided a summary below of some of the changes we can expect to see from this Bill being introduced.

New Definition of “Residential Property”

Under the PAMDA there was a complex definition of “residential property” which required references to a few set criteria and in some cases the town planning scheme and uses of the land. The new definition will be clarified to mean:

“Real property that is used, or is intended to be used, for residential purposes but does not include real property that is used primarily for the purposes of industry, commerce or primary production”.

Simplified Contract Process

The requirement for warning statements (both Form 30C and BCCM Information Statement) to be attached to relevant contracts of sale will now be removed. Instead, contracts for residential property will be required to include a short advice immediately above the place the buyer is to sign. Such a statement is to contain words to this effect:

Liability limited by a scheme approved under professional standards legislation.

“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 obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing”.

The above only needs to be provided once and does not continue to apply to any counteroffers made throughout the negotiation process unless the property or the buyer changes.

No termination right

A buyer will no longer have a right to terminate a contract of sale if the above advice is not included or is in the wrong place.

A seller (which would also include the seller’s agent if they prepared the contract of sale), who fails to include such a statement will now face prosecution for an offence and payment of a penalty.

No requirement to draw buyer’s attention

There will also no longer be a requirement to draw the buyer’s attention to the above statement or advice.

Definition of “relevant contract”

The Bill has now clarified what is considered to be a relevant contract. A relevant contract is a contract (including a contract granting an option to purchase) for the sale of residential property but excluding:

- A contract formed on auction including a contract entered into within 2 business days of the auction (see below ‘Auctions’);
- A contract (a later contract) formed because of the exercise of an option granted under an earlier contract if the parties to the later contract are the same as the parties to the earlier contract;
- Where the buyer is a “sophisticated buyer “ being -
 - the government or a statutory authority;
 - a publicly listed company or its subsidiary;
 - a buyer who buys 3 or more lots at the same time, whether or not in the 1 contract.

As noted above, the definition now clearly includes granting an option to purchase, which was a bone of contention in the past and the subject of much litigation. Whilst the advice and cooling-off period will apply to options per se, they will not apply to the contract where the original buyer exercises the option. In the case of a third party however exercising the option, (in the absence of a waiver notice), a cooling off period will apply.

Cooling-off

The timing of the cooling-off period has remained unchanged. However, the procedure for waiving or shortening a cooling-off period has been simplified. This will no longer require a solicitor's certificate – the buyer may simply waive or shorten the cooling-off period by written notice to the seller.

There are also clear exclusions from the cooling-off period as set out above in the definition of "relevant contract".

Auctions

The cooling-off period still won't apply to contracts formed on the fall of the hammer at auction. However, this has now been extended to contracts entered into within two business days of the auction, provided the buyer was a registered bidder at the auction.

Changes affecting agents and property developers directly

The changes to how agents manage their business will have an impact on all buyers and sellers in Queensland. In brief, these changes include the following:

- the number of licence categories has been reduced to 3 – real estate agents, auctioneers and residential letting agents;
- the removal of the requirement for an agent to give a prospective buyer a notice where vacant land being sold is not currently zoned for residential purposes;
- the removal of the maximum cap on agent's commission on residential property sales which is now consistent with NSW and Victoria;
- the removal of the requirement for agents to disclose to prospective buyers the amount of commission they will (or expect to) receive – commonly known as the PAMDA Form 27C;
- extension of the maximum term for a sole or exclusive agency from 60 to 90 days;
- the removal of the requirement for a resident letting agent to live on site - this means resident letting agents can now hold management rights in more than one building;
- property developers will no longer be required to be licensed which is consistent with other States in Australia.

We are currently awaiting word from Parliament as to when this Bill will be proclaimed for its commencement date. We expect this will be in the immediate future.

We anticipate that the REIQ and the Qld Law Society will issue amended versions of the standard residential contract of sale to reflect the changes in the legislation. We hope to issue a further update to readers when the date of commencement of the legislation is announced.

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