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PROPERTY ALERT

QUEENSLAND PROPERTY OCCUPATIONS BILL PASSED BY PARLIAMENT

13 MAY 2014

Overdue simplification of the sale of residential property in Queensland is coming, with the passing of the Property Occupations Bill 2013 in Parliament on Tuesday 6 May 2014. The new legislation is to commence on a date to be proclaimed, anticipated to be late in Q3 2014.

The Bill (together with 3 other industry-specific bills) replaces the *Property Agents and Motor Dealers Act 2000* (Qld) (PAMDA) and will establish a simplified regime which will free-up the residential property sale process.

NEW DEFINITION OF "RESIDENTIAL PROPERTY"

The term "residential property" is currently defined in PAMDA by reference to a complicated set of criteria which in some cases requires reference to town planning schemes as well as consideration of the location and actual use of the property.

The term "residential property" 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".

Although the test has been simplified, further issues may arise (particularly in the months following commencement) in relation to the intention of use (i.e. which party's intention is relevant).

CLARIFYING A "RELEVANT CONTRACT"

What a "relevant contract" is will be clarified. Under the new legislation, a relevant contract will be a contract (including a contract granting an option to purchase) for the sale of residential property, and will not include:

- a contract formed on a sale by auction, or a contract that has been entered into by 5.00pm on the second clear business day after the property was passed in at auction, where the Buyer under the contract was a registered bidder at the auction;
- a contract formed as a result of the exercise of an option granted under an earlier contract (provided the parties to the later contract are the same as the parties to the earlier contract); or
- a contract with a "sophisticated buyer", being:
 - a publicly listed corporation, or a subsidiary of a publicly listed corporation;
 - the State or a statutory body; or

- a buyer purchasing at least three lots at the same time, whether or not in the one contract.

REMOVAL OF FORM 30C WARNING STATEMENT AND FORM 14 INFORMATION SHEET

A relevant contract will no longer be required to have a warning statement (and, in the case of strata lots, a BCCM Act Information Sheet) attached.

Under the Bill, a relevant contract must contain the following statement (or words to this effect):

"The 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."

This statement must appear on the same page as, and immediately above, the buyer's execution clause.

Unlike under PAMDA, there will be no buyer termination right for non-compliance with this requirement. A seller who fails to include the required statements in a relevant contract will now only face prosecution for an offence and payment of a penalty.

NEW, SIMPLER COOLING-OFF REGIME

The length and timing of commencement of the statutory cooling-off period will be unchanged. However, the process by which a buyer may waive or shorten the cooling-off period, or terminate the contract during the cooling-off period will be simplified.

Waiving or shortening of the cooling-off period 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.

As there is no specified time period for the giving of a "waiver notice", the cooling-off period may be waived or shortened either before or after entry into the contract.

CHANGES AFFECTING REAL ESTATE AGENTS

The Bill also introduces a number of changes to the way real estate agents do business in Queensland. Briefly, these changes will:

- reduce the number of licence categories to 3 – real estate agents, auctioneers and residential letting agents;
- remove the requirement for an agent to give notice to a buyer relating to the use of vacant land;
- remove maximum caps on agents' commissions and the requirement for real estate agents to disclose the amount of commission they will (or expect to) receive;
- exempt real estate agents from compliance with the Bill for large scale transactions involving non-residential and non-rural property;
- extend the maximum term for a sole or exclusive agency appointment from 60 to 90 days; and

- permit resident letting agents to manage more than one building and remove the on-site residence requirement.

In addition to the changes directly affecting real estate agents, the Bill provides for certain exemptions for administrators, receivers, liquidators and controllers from the Bill's licensing provisions where they are appointed to corporations or natural persons who have become unlicensed.

CHANGES AFFECTING DEVELOPERS

Property developers (and their employees) will no longer be required to be licensed. This will align Queensland with other States in the regulation of property developers.

We anticipate that the REIQ and the Queensland Law Society will issue amended versions of their standard residential property contracts to reflect the new legislation. We will issue a further update when the date of commencement of the new legislation is announced.

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