

PAMDA – Sense at last

Proposed amendments to the Property Agents and Motor Dealers Act 2000 will address many of the problems the Act currently causes for residential property sales

The Queensland Government has finally taken steps to fix the mess that is Chapter 11 of the *Property Agents and Motor Dealers Act 2000*. The Act (in)famously hyper-regulates the process for the formation of residential property contracts and is a constant nightmare for real estate agents, conveyancing lawyers, and the vendors of residential property.

The requirements imposed by the PAMDA are currently so technical and complicated that it is simply too easy to end up:

- § not knowing whether a residential property contract truly has been formed; or
- § with a contract under which the buyer has a right of termination at any point up until settlement.

The existing rules are far more a sword for the unscrupulous purchaser than a shield against the evil marketeer.

On 24 March 2010, an amending Bill was introduced into the Parliament. The new rules in the Bill, when enacted, will dramatically simplify the contracting process and rationalise the rights of vendors and purchasers. Unfortunately, the amendments are not expected to be in force until later in 2010.

What hasn't changed?

While the amendments involve the complete replacement of the relevant Parts of the Act, certain requirements and procedures are essentially unchanged:

- § residential property contracts (“relevant contract”) will still require a Form 30c Warning Statement and attract a cooling-off period, except where the sale is made at auction;

- § the Form 30c will still have to be attached to a proposed relevant contract when the vendor or vendor’s agent sends it to the buyer (the rules about relevant contracts sent by fax or email are essentially unchanged);
- § the vendor or the vendor’s agent will still be required to direct the attention of the buyer to the warning statement when sending the relevant contract;
- § the Form 30c must be attached to a signed relevant contract when the vendor sends it to the buyer;
- § failure to properly comply with these obligations by the vendor or vendor’s agent is an offence;
- § the cooling-off period is still 5 business days from when the contract is formed, unless properly waived or shortened.

What is new?

The key changes to be made by the proposed amendments are:

- § the *Rice v Ray* decision has been overcome and new warning statements will not be required when a proposed relevant contract is amended, provided the property and the buyer do not change;
- § if the Form 30c is not provided and/or the direction is not given then the buyer will have a termination right *unless* the buyer signed the Warning Statement before signing the contract;
- § the buyer’s termination right for failure to provide a Warning Statement or a direction to the Warning Statement lapses 90 days after the contract is signed.

Limited right to terminate

What will be really different under the new rules is that the buyer will only be able to terminate a relevant contract in very limited circumstances, namely, where:

1. the relevant contract was provided to the buyer by the vendor or the vendor’s agent; and
2. the Warning Statement was not properly attached or included and/or the buyer was not directed to the Warning Statement; and

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3. the buyer did not sign the Warning Statement before signing the relevant contract; and
4. not more than 90 days has lapsed since the contract was formed.

These changes are very sensible. It was absurd that a buyer who had signed the Warning Statement could still terminate a contract if their attention had not been drawn to the Warning Statement, or it was not attached to the front of the contract. It has become relatively common for purchaser to take advantage of technical rules to terminate contracts in circumstances where clearly no consumer protection issues existed.

Transitional arrangements

The amendments will apply to existing contracts unless termination rights under the existing law have already been exercised when the amendments take effect.

The current provisions of the Act give buyers, depending on the nature of the non-compliance, the right to either withdraw an offer that is deemed to not yet be binding or to terminate the contract. When the amendments come into force they will retrospectively apply to existing contracts where the pre-amendment rights have not been exercised.

Where, under the existing provisions of the Act, the cooling off period has not yet stated at the commencement of the amendments, the cooling off period will be deemed to start on the day the amendments commence to be law.

Further changes that should be made

The proposed amendments are a good first step and will remove most of the problems currently caused by the Act. However, really comprehensive reform of Chapter 11 would include:

- § amendments to the definition of “residential property” so that commercial transactions are not caught by the Act;
- § a clear statement of how the Warning Statement requirements of the Act apply where the contract is produced and submitted by the buyer or an agent for the buyer – it would seem the position will be that:
 - ü the Warning Statement does not have to be attached to the relevant contract until it is

signed by the seller and returned to the buyer; and

- ü the buyer’s signature is not required on the Warning Statement at all;

§ provisions to make it clear that the procedural requirements of the Act do not apply all over again to a contract formed when the grantee of an option exercises the option.

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