



## Property Occupations Act 2014 replacing PAMDA

AUTHORS // PAUL O'DEA AND JOANNA CZAJKOWSKI

The development and real estate industries have welcomed the passing of the *Property Occupations Act 2014 (the Act)* by Parliament with amendment on 7 May 2014.

The Act will regulate property occupations and transactions, and is one of four Acts that will provide for the repeal and split of the *Property Agents and Motor Dealers Act 2000 (Qld) (PAMDA)*.

### COMMENCEMENT OF THE ACT

The commencement of the Act is to be fixed by proclamation.

It is understood that the Act will commence after consultation with industry, to allow time to prepare for the legislated changes.

This article discusses some of the more significant changes that will be introduced upon the commencement of the Act.

### RESIDENTIAL PROPERTY REDEFINED

The meaning of residential property has been replaced with the following definition:

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

Contracting parties will now have greater certainty on whether the Act will apply to a transaction.

### REMOVAL OF WARNING STATEMENTS

The Act removes the requirement to attach a PAMDA Form 30c Warning Statement and a *Body Corporate and Community Management Act 1997 (Qld) ("BCCMA")* Form 14 Information Sheet to a relevant contract.

A prescribed statement will however need to be included, immediately above and on the same page where the buyer signs, using the following conspicuously written words or words to the like 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.*

Non-compliance with these provisions will result in a penalty of up to \$22,000 and not a termination right, as is currently prescribed under PAMDA.

The requirements for a seller to provide a disclosure statement under BCCMA and the ability of the buyer to terminate for the failure to provide a disclosure statement will remain.

### COOLING-OFF PERIOD

The existing five day cooling-off period and the non-application of the period to sales by auction will continue.

No cooling-off period will apply to contracts entered into two business days after an auction, provided the buyer was a registered bidder at the auction.

The PAMDA Form 32a Lawyer's Certifications will no longer be required to waive a cooling-off period. Instead, a buyer will be able to waive or shorten the cooling-off period by written notice to the seller.

A termination notice under the cooling-off period will not need to specify the section of the legislation under which the buyer is terminating, nor be dated.

### COMMISSION

Commission will no longer need to be capped and agents will not need to disclose the commission that they are receiving from the seller to the buyer.

Once the legislation commences, agents will be allowed to receive commission when they have a beneficial interest in the property, provided they disclose that interest to the seller, and the seller consents to the agent obtaining that interest.

## RESERVE PRICE

The Act maintains the requirements and prohibitions on agents in relation to representations about price.

Agents will be allowed to disclose that a reserve price has been set for residential property proposed for auction but not the reserve price.

Price guides will also be banned at auctions.

## LICENCE CATEGORIES

The Act reduces the licence categories to three for real estate agents, auctioneers and resident letting agents.

There will only be one category of registered employee.

Property developers and their employees will no longer need to be licensed.

## REAL ESTATE AGENTS

The Act removes the following requirements on real estate agents:

- (a) for principal licensees to display their licence at their registered offices;
- (b) to provide photographs and auditor's details with licence applications;
- (c) to provide evidence of active trading on renewal of a licence;
- (d) for an employment register to be maintained;
- (e) to provide a prospective buyer of non-residential vacant land with a written statement that the land cannot be used for residential purposes; and
- (f) to give notice about the sale of a resident letting agent's business to prospective buyers of the business.

In relation to the appointment of agents, the Act:

- (a) provides for one approved form that can be used by any agent for any type of appointment as long as it contains the required information;
- (b) removes the requirement to state how services are to be performed;
- (c) removes the requirement to include the end date in continuing appointment;
- (d) requires a written sole or exclusive agency appointment stating the end date, which has been extended to a maximum of 90 days. This information is not required to be in an approved form.
- (e) removes the requirement for sole or exclusive agents to bring client's attention to particular information in the approved form;

- (f) allows appointments, other than sole or exclusive agency appointments for over 60 days, to be terminated by providing a minimum of 30 days notice;
- (g) allows for any appointment to be terminated sooner if both parties agree, in writing, to an earlier termination date; and
- (h) removes the requirement for a client to be informed at least 14 days prior to the assignment of an appointment. Alternatively, the agent being appointed must provide written notice to the client within 14 days of the assignment containing the required information.

## RESIDENT LETTING AGENTS

The changes for resident letting agents include:

- (a) allowing agents to manage more than one building complex;
- (b) removing the requirement for agents to reside on-site;
- (c) removing the requirement to give evidence of body corporate approval with a licence application; and
- (d) allowing agents of a 'mixed use development' to obtain a resident letting agent licence.

## EXEMPTIONS FROM THE ACT

The Act extends the PAMDA exemption for administrators, liquidators, controllers and receivers from licensing requirements when they are appointed to corporations or natural persons, who were formerly licensed.

Agents acting on behalf of an entity that owns non-residential or non-rural property over the size or financial threshold, yet to be prescribed by regulation, will be exempt from the legislation.

Residential property sales provisions under the Act, which require a cooling-off period and prescribed statement will not apply to the following contracts:

- (a) a contract if the buyer is a publicly listed corporation or a subsidiary of a publicly listed corporation;
- (b) a contract if the buyer is the State or a statutory body; and
- (c) a contract if the buyer is purchasing at least three lots at the same time, whether or not in the one contract.

## WHERE TO FROM HERE?

PAMDA will continue to apply to a relevant residential contract, as it currently does, if it is entered into before the commencement of the Act.

It is important that professionals involved in property transactions understand the new requirements and prepare for the commencement of the Act.

We will provide you with an update once the commencement date is announced.

### FOR MORE INFORMATION, PLEASE CONTACT:



PAUL O'DEA //  
Partner

T 61 7 3001 9243  
E [p.odea@clarkekann.com.au](mailto:p.odea@clarkekann.com.au)



JOANNA CZAJKOWSKI //  
Lawyer

T 61 7 3001 9218  
E [j.czajkowski@clarkekann.com.au](mailto:j.czajkowski@clarkekann.com.au)

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