



## Property Occupations Act 2014 – 5 Property Tips

AUTHORS // PAUL O'DEA, STEVEN CARDELL & MATTHEW ARMSTRONG

The *Property Occupations Act 2014* (Qld) (**Act**) will commence on 1 December 2014 replacing the *Property Agents and Motor Dealers Act 2000* (Qld) (**PAMDA**). Amendments to the *Land Sales Act 1984* (Qld) (**LSA**) and *Body Corporate and Community Management Act 1997* (Qld) (**BCCMA**) will also commence on 1 December 2014 to streamline amendments to key property law legislation in Queensland. The Act reduces the red tape and regulation imposed by PAMDA and has been welcomed by the property industry.

### 1. RESIDENTIAL PROPERTY REDEFINED

The meaning of residential property has been simplified to create more certainty for the property industry. The Act now defines residential property as:

*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.

### 2. REMOVAL OF WARNING STATEMENTS

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

The following statement must be included, immediately above and on the same page where the buyer signs,

*“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.

### 3. COOLING-OFF PERIOD

The Act maintains the statutory five day cooling-off period for residential property.

No cooling-off period will apply to contracts entered into within 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 without first instructing a solicitor.

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.

### 4. LAND SALES ACT

The LSA no longer applies to sales arising from a subdivision of land into not more than five lots. The amendment removes the need for LSA exemption and replaces it with an automatic exemption. Off the plan sales will be entitled to request a deposit of up to 20% of the purchase price without the relevant contract becoming an instalment contract to assist property developers with financing arrangements. The parties to a proposed off the plan community titles scheme contract may agree to a five and a half year sunset date increasing the current limit by two years.

If the parties do not agree the statutory sunset date will remain at three and a half years. The sunset date for proposed land subdivisions remains at 18 months.

### 5. WHERE TO FROM HERE?

PAMDA will continue to apply to a relevant residential contract, up to and including 30 November 2014. From 1 December 2014 the *Property Occupations Act* will apply to a relevant contract and the new industry approved forms must be used. It is important that Contracts entered into before 30 November 2014 must comply with PAMDA and the current industry approved forms. Contracts that have been signed by one party before 1 December 2014 but not the other will need to be reissued in the new form of contract required under the Act.

ClarkeKann are available to assist with any query you have regarding the Act.

FOR MORE INFORMATION, PLEASE CONTACT:



PAUL O'DEA //  
Partner  
T 07 3001 9243  
E [p.odea@clarkekann.com.au](mailto:p.odea@clarkekann.com.au)



STEVEN CARDELL //  
Partner  
T 07 3001 9239  
E [s.cardell@clarkekann.com.au](mailto:s.cardell@clarkekann.com.au)



MATTHEW ARMSTRONG //  
Lawyer  
T 07 3001 9256  
E [m.armstrong@clarkekann.com.au](mailto:m.armstrong@clarkekann.com.au)

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ClarkeKann  
LAWYERS

CLARKEKANN.COM.AU

Queensland

Level 7, 300 Queen Street  
Brisbane QLD 4000  
Australia

T // +61 7 3001 9222  
F // +61 7 3001 9299  
E // [ck@clarkekann.com.au](mailto:ck@clarkekann.com.au)

New South Wales

Level 4, 9 Castlereagh Street  
Sydney NSW 2000  
Australia

T // +61 2 8235 1222  
F // +61 2 8235 1299  
E // [ck@clarkekann.com.au](mailto:ck@clarkekann.com.au)