

E-Conveyancing

It is anticipated that an electronic conveyancing system will be available in Queensland by mid 2014 enabling conveyancing transactions for land to be completed electronically with instruments lodged directly into electronic land registers.

Use of this electronic platform will mean there is no need to have paper transfer documents signed or to attend a physical settlement. However, use of the system will not be mandatory and the existing process for conveyancing transactions will continue.

The *Electronic Conveyancing National Law (QLD) Bill 2012* provides for the implementation and operation of the national electronic conveyancing system by amending the *Land Title Act 1994* and the *Land Act 1994* so that they provide the framework required.

The national law authorises the registrar of titles to operate or authorise operation of the electronic lodgement network and in doing so enables the registrar to set requirements and rules for the operation and use of the network.

The national law also makes provision for the security and effectiveness of electronic conveyancing by imposing certain requirements for the authorisation of legal practitioners to undertake transactions through the electronic lodgement network on behalf of clients, by facilitating the signing of documents by way of digital signatures and granting the registrar powers which include the power to conduct compliance examinations and to revoke or suspend an operator's approval.

The first release of the electronic conveyancing system took place in Victoria in June 2013 and enabled the Land Titles Offices and financial institutions to perform single party transactions such as discharges, mortgages and refinances. From all reports the electronic system has resulted in time and cost efficiencies by reducing the time spent preparing paper based documentation and removing the need for a physical settlement.

The electronic conveyancing system is all about the settlement process. When it becomes available in Queensland, we will expect to see some changes of a technical nature to the clauses in the standard form contract to support the electronic settlement system. Other than changes to the contract, we do not anticipate that the electronic conveyancing system will make any difference to the sales and contract formation process. Sales agents will still sign up buyers and sellers on a standard form contract as they do now.

PAMDA

At present the *Property Agents and Motor Dealers Act 2000* ("PAMDA") covers a number of licence and registration classes across a number of industries such as real estate agents, property developers, residential letting agents, motor dealers and auctioneers.

With the aim of reducing the burden on businesses licenced under PAMDA by reducing the rigid conformity currently required by the provisions of PAMDA, the Queensland Government is seeking to separate PAMDA into industry specific acts. To this end, the following bills have been drafted:

- Property Occupations Bill 2013;

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- Motor Dealers and Chattel Auctioneers Bill 2013;
- Commercial Agents Bill 2013; and
- Agents Financial Administration Bill 2013.

The Property Occupations Bill 2013 specifically deals with property agents, residential letting agents and the registration and regulation of real estate sales persons. A key amendment in this bill and one which the government hopes will streamline residential sale contracts is the removal of the requirement for a Warning Statement (and in the case of a unit sale, the Information Sheet) to be attached to the contract.

Under the Property Occupations Bill 2013, the main components of the current PAMD Form 30c Warning Statement will be contained in the contract on the signing page nearby the signing section for the buyer. The changes proposed will require a statement to appear on the signing page of the contract drawing the buyer's attention to the fact that they have a five (5) business day cooling off period and also recommending that they obtain legal advice on the contract prior to signing.

Furthermore, the seller or their agent will no longer be required to draw the buyer's attention to a Warning Statement and therefore, the buyer will not be able to terminate the contract simply because such statement was not given when the contract was presented to them. Instead a monetary penalty will apply to sellers or agents where there is a failure to include words on the signing page of the contract notifying the buyer of their entitlement to a cooling off period and recommending that they obtain legal advice.

The new process will apply to relevant contracts entered into after commencement of the Property Occupations Bill, while the repealed provisions will continue to apply to those relevant contracts entered into prior to commencement.

No doubt the proposed changes will be welcomed by the real estate and development industry, particularly in light of the difficulties currently experienced when trying to enforce a contract against a buyer where there has been a breach of the PAMDA requirements.

And just quickly...

By now you will have seen the new BCCM Form 14 Information Sheet (version 11) which needs to be attached to all new contracts from 1 August 2013 for the sale of lots in a Community Titles Scheme.

The new form is a consequence of an amendment to the *Body Corporate and Community Management Act 1997* (Qld) whereby the need to provide the buyer with a copy of the Community Management Statement for a registered lot has been removed.

Please note that this amendment does not have any effect on the disclosure obligations for lots sold off the plan and therefore, a copy of the proposed Community Management Statement will still need to be provided to buyers purchasing off the plan.

Feedback

Kelly Conveyancing is the residential conveyancing division of Kelly Legal. This newsletter is intended to provide an information and referral network for residential real estate agents, mortgage brokers, accountants, financial institutions and buyers and sellers of residential property. If you have any feedback on this edition of Kelly Conveyancing's newsletter 'Clear Title' or suggestions for topics in upcoming editions you are invited to contact the Manager of Kelly Conveyancing, Shaun Spada on (07) 4911 0504.