

On 16 April 2008 a Bill was introduced into Queensland Parliament amending section 24 of the *Legal Profession Act* which deals with *Property Agents and Motor Dealer Act* ("PAMDA") Licensees and employees providing legal advice.

In a previous fact finder prepared by our office we advised you of the requirements for PAMDA Licensees preparing contracts pursuant to the then recently introduced amendments to the *Legal Profession Act*. It was our opinion that whilst there was much confusion in relation to interpreting section 24 that PAMDA Licensees could continue to prepare contracts in pre-printed forms such as the REIQ and ADL form contracts.

The amendments now introduced to Parliament confirm our previous advice to you.

The amended section 24 generally summarised provides:-

1. That neither a PAMDA Licensee nor a PAMDA employee is engaging in legal practice if they prepare or complete a property contract or other documents as part of performing either:-
 - (a) The work of a PAMDA Licensee; or
 - (b) Other work ancillary or incidental to the work of a PAMDA Licensee in the ordinary course of business.
2. A PAMDA Licensee's work does not include:-
 - (a) Giving legal advice in relation to a property contract or other document; or
 - (b) Providing, preparing or completing a document prescribed under any Regulation.
3. A PAMDA Licensee or employee prepares or completes a contract or other document:-
 - (a) By inserting information in a blank space, or crossing or leaving out an alternative included in the contract or other document; or
 - (b) By inserting a term into, or altering a term of, the contract or other document if:-
 - (i) The insertion or alteration:-
 - Is authorised by a party to the proposed property contract or other document;
 - Is given in writing to the Licensee or employee by a party to the proposed contract; or
 - Was prepared previously by an Australian Legal Practitioner.

- (ii) The Licensee or employee does not change the insertion or alteration except in relation to:-
- Changing a detail about the transaction that is the subject of the property contract or other document; or
 - Crossing out or leaving out an alternative or changing the grammatical form of words of the insertion or alteration.

The Legal Profession Act now gives an example of preparing or completing a property contract as “A PAMDA Licensee gives a property contract to a seller to sign. The Licensee has prepared or completed the property contract by printing the relevant form from the REIQ website and by filling in required details, including the names and addresses of the seller and buyer and the address and description of the property. The PAMDA Licensee inserts two special conditions into the contract. The first special condition is one that the seller gave to the Licensee because the property is located within a gated community and the condition related to the standard covenants for the community. The second special condition is about financing and the Licensee uses the special condition known by Licensee to be prepared by an Australian Legal Practitioner for another transaction but changed details to ensure the property contract read properly.”

PAMDA Licensees and employees are now permitted to insert special conditions into contracts and also to prepare contracts that are not in a pre-printed form, often referred to as a precedent contract. However, we urge caution in inserting special conditions and using precedent contracts as usually the precedent is specific to a transaction and a particular set of circumstances and may not be ideal for a different transaction.

It is still important that PAMDA Licensees and employees exercise caution and do not provide any legal advice as to the meaning or effect of any terms in the contract, whether standard terms or special conditions. As a matter of course, agents should recommend that clients seek legal advice prior to executing any contract. Agents should also insert the condition previously provided where the parties acknowledge the agent did not provide legal advice.

If you do not have a copy of our Special Conditions Disk please contact us.

Please contact Tony Pattinson, Byron Cannon or Tom Wood at Ferguson Cannon if you would like to discuss any of the information provided above.