

## Commercial Property Fact Sheet

### Changes to PAMDA/BCCMA

The *Property Agents and Motor Dealers and other Legislation Amendment Bill* has been passed by Parliament and commences on 1 October 2010.

The new legislation removes and replaces chapter 11 of the *Property Agents and Motor Dealers Act 2000* (**PAMDA**) and bring with it parallel amendments to the *Body Corporate and Community Management Act 1997* (**BCCMA**). The changes aim to streamline and preserve the existing consumer protection provisions whilst achieving greater enforceability of Contracts and to limit circumstances where Buyers can rely on technical non-compliance to avoid their contractual obligations.

Under the new legislation, Buyers of residential property in Queensland must exercise any right of termination arising from non-compliance with the relevant PAMDA and/or BCCMA legislation within 90 days of receiving the Contract. Buyers under existing Contracts (ie entered into prior to 1 October 2010) must exercise any right of termination arising from PAMDA/BCCMA non-compliance by 30 September 2010 after which time such termination rights will be lost. Non-compliance with the new regime can not only afford the Buyer a termination right, but may carry with it liability for the Buyer's reasonable legal expenses, and a penalty of up to \$20,000.00.

#### What's New? – in a Nutshell

The following changes will apply from 1 October 2010:

- New versions of the PAMDA Form 30C Warning Statement (**Warning Statement**) and BCCMA Form 14 Information Sheet (**Form 14**) will be released and must be used on and from 1 October 2010. Important, there is no grace period.
- The Warning Statement and Form 14 no longer need to be in the order previously prescribed provided that they are attached to the Contract.
- Fresh directions drawing the Buyer's attention to the Warning Statement, Form 14, Contract and Disclosure Statement (where applicable) in circumstances where there have been variations or negotiations to Contract terms are

no longer requirement to be given provided that the parties and or the property details do not change.

- Buyers' rights to cancel the contract in the event of non-compliance with PAMDA are restricted to **90 days** from receipt of the Contract, The Buyer loses its right to terminate the Contract for the Seller's non-compliance with the requirement to direct the Buyer's attention to the Warning Statement, Form 14 (if applicable), Contract and Disclosure Statement (if applicable) in circumstances where the Buyer has signed the Warning Statement before signing the Contract.
- Buyers of Pre-amendment Contracts (ie contracts which have been executed before 1 October 2010) must exercise any existing rights of termination arising from non-compliance with the existing legislation by 30 September 2010.
- Once the Buyer's attention is drawn to the Warning Statement, Form 14, Contract and Disclosure Statement (where applicable), a second direction is not required following execution of the Contract.

#### Do Not Forget

The following requirements remain and must be complied with. Non-compliance may afford Buyers the right to terminate the contract within the new 90 day period and to seek reimbursement of costs.

- Where applicable, the BCCMA Disclosure Statement must be completed, signed and dated by the Seller/Seller's Agent prior to the Contract being issued to the Buyer.
- The Warning Statement must be completed, signed and dated by the Buyer prior to the Buyer signing the Contract.
- Current version of the Warning Statement and Form 14 (where applicable) must be correctly signed and attached to the Contract.
- The attachment provisions of PAMDA remain. Relevant documents must be stapled or bound to the Contract.

- The Buyer's attention must be directed to the Warning Statement and proposed relevant Contract and Form 14 and Disclosure Statement (where applicable) prior to the Buyer signing the Contract.
- The Buyer's attention must be directed to the Warning Statement and proposed or relevant Contract and Form 14 and Disclosure Statement (where applicable) on each occasion when Contracts are varied or renegotiated if the parties to the Contract or the property the subject of the Contract changes.
- The Buyer's prior consent must be obtained when transmitting Contract documents electronically.
- The Buyer has the right to terminate the Contract during the 5 business day statutory cooling-off period.

### Tips for Success

- Continuing to comply with the previous legislation is not a breach of the new legislation. If in doubt, *don't* leave it out.
- Always obtain a written Acknowledgement from the Buyer confirming the Contract process has been correctly followed.
- Remain vigilant. Monitor the 90 day termination period and confirm expiry of it at the relevant time.
- Use automatic updating software to ensure the new PAMDA and BCCMA Forms are used from and including 1 October 2010. There is no amnesty period. Contracts bearing former versions of the forms are potentially voidable by the Buyer.

### Important Pre 1 October 2010 Considerations

- Buyers of pre-amendment Contracts (ie Contracts executed prior to 1 October 2010) must exercise any right of termination for PAMDA and/or BCCMA non-compliance on or before 30 September 2010. It is foreseeable that some Buyers may purport to exercise termination rights on or before 30 September 2010.
- It is important that the current versions of the Warning Statement and Form 14 accompanying a Contract are not sent to Buyers by post during the period leading up to 1 October 2010. Contracts sent by post are

not 'given' until the contract is received in the post. The risk for Sellers is that Contracts with current Warning Statements and Form 14 sent pre 1 October 2010 and received on or after 1 October 2010 may give Buyers a right to terminate the Contract on the basis that the Warning Statement and Form 14 are not the current versions. If a Contract must be sent to a Buyer pre 1 October 2010, it is suggested the Contract is either hand delivered or delivered by courier prior to the 1 October 2010 deadline.

### General

Should you require any further information in relation to the amendments to PAMDA or BCCMA, please contact Rhett Oliver or Angela Spear.

### Contact:

**Rhett Oliver**  
**Partner**

**T:** +61 7 3002 8702

**F:** +61 7 3221 3068

**E:** [RhettO@hemhart.com.au](mailto:RhettO@hemhart.com.au)

**Person**  
**Title**

**T:** +61 7 3002

**F:** +61 7 3221 3068

**E:** [angelas@hemhart.com.au](mailto:angelas@hemhart.com.au)

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