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Qld Real estate contracts enter the electronic age

"The Beattie Government has amended property laws to provide certainty in the electronic transmission of real estate contract documents", according to a recent media release from the Minister for Fair Trading Margaret Keech.

Mrs Keech said amendments to the [Property Agents and Motor Dealers Act 2000](#) (PAMDA) and the [Body Corporate and Community Management Act 1997](#) would take effect from December 1.

"The Government moved immediately to provide certainty following comments made in the Court of Appeal," she said.

"A buyer had sought to have a faxed contract terminated because the mandatory Warning Statement, Form 30c was not *attached* as the first page of the contract.

"The Court of Appeal in its interpretation of the word *attached* raised doubts as to whether documents could be faxed and still comply with sections 365 and 366 of PAMDA.

"Stakeholders were concerned about the potential for contracts to be cancelled because faxing or emailing contracts may breach the Act.

"The amendments clarify the requirements regarding transmission of real estate documents and reduce the risk of contracts being cancelled purely because of the method of transmission used."

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Under the amendments, if the seller or the seller's agent is **faxing** documents, they must ensure that they are sent in the following order:

1. Single page fax cover sheet containing a clear statement directing the buyer's attention to the documents listed below;
2. The mandatory Warning Statement (PAMD Form 30c);
3. The mandatory information sheet if it is for a unit sale;
4. The relevant contract / proposed relevant contract;
5. The disclosure statement if it is for a unit sale, if not already provided;
6. Any other documents.

If **emailing** the seller or seller's agent must:

- send a message directing the buyer or the buyer's agent's attention to the documents listed below;
- place the documents below in the following order in one file:
 1. The mandatory Warning Statement (PAMD Form 30c);
 2. The mandatory information sheet if it is for a unit sale;
 3. The relevant contract / proposed relevant contract;
 4. The disclosure statement if it is for a unit sale, if not already provided;and
- send any other documents in a separate file or folder.

Mrs Keech said the new requirements ensured existing consumer protection requirements for the delivery of hard copy real estate contract documents were maintained if they were delivered by electronic transmission.

"If **physically handing** the contract / proposed contract to the buyer, the Warning Statement must be attached as the top or front sheet of the contract. In the case of a unit sale, the information sheet is to be attached between the Warning Statement and the contract. Additionally, the seller or seller's agent must now also direct the buyer's attention to the Warning Statement and information sheet (if a unit sale)," she said.

"If **posting** the contract, the Warning Statement must be attached as the top or front sheet of the contract. In the case of a unit sale, the information sheet must be attached between the Warning Statement and the contract. Additionally, the seller

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or the seller's agent must now also enclose a statement directing the buyer's attention to the Warning Statement, the information sheet (if a unit sale), and the contract / proposed contract."

Mrs Keech said the amendments would also allow for sellers or their agents to rectify mistakes that may be made in the way the contracts are transmitted, if contracts had not already been signed by both parties.

"Importantly, if the seller or seller's agent does not send the documents as described above, the amendments allow for the seller or seller's agent to correct such an accident or error," she said.

"The seller or seller's agent can provide a notice to the buyer:

- indicating the error;
- recalling the proposed relevant contract documents; and
- advising whether new documents complying with the requirements will be given to the buyer.

"This can only be done before both parties have signed the contract."

Mrs Keech reminded real estate agents that they also needed to be aware of the requirements of the [Electronic Transactions \(Queensland\) Act 2001](#), administered by the [Department of Justice and Attorney General](#), if they intended to fax and email contract documents.

"The *Electronic Transactions (Queensland) Act 2001* is part of a national scheme to facilitate the use of electronic transactions generally. It requires for example, that all parties must agree to using an electronic communication method before it is used," she said.

Source: Office of Fair Trading Media Release 29 November 2005.

Should you wish to discuss any of the above in more detail or require assistance in determining how these changes may affect you, please do not hesitate to contact us.

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