

Q&S CONVEYANCING UPDATE

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AGENTS NOT TO DRAFT CLAUSES

As all PAMDA licensed real estate agents ("Agents") should now be aware, amendments to the *Legal Profession Act 2007* ("the Act") which came into force in July 2007 prohibit Agents from drafting their own clauses and special conditions in a property contract or other document ("a Contract").

The Act states that:-

1. Only legal practitioners must be engaged in legal practice;
2. Agents must not give legal advice in relation to a Contract.
3. Agents do not engage in legal practice only because they prepare or complete a Contract as part of performing the work of an Agent in the ordinary course of their business.
4. Agents can prepare or complete a Contract by doing only the following:
 - (a) Inserting information in a blank space or crossing or leaving out an alternative included in a Contract; or
 - (b) By inserting a term into or altering a term of a Contract if:
 - (i) The insertion or alteration:
 - (A) Is authorised by a party to the proposed Contract; or
 - (B) Is given in writing to the Agent by a party to the proposed Contract; or
 - (C) Was previously prepared by a legal practitioner whether or not in connection with the Contract; and
 - (ii) The Agent does not change the insertion or alteration except in relation to:
 - (A) Changing a detail about a transaction that is the subject of the Contract; or
 - (B) Crossing or leaving out an alternative or changing grammatical form of words of the insertion or alteration.

If Agents breach the Act then they may face maximum penalties of \$22,500 or 2 years imprisonment. The Act therefore allows for the use of precedent clauses and special conditions and accordingly we strongly recommend that Agents use precedents prepared by a legal practitioner.

With this in mind, Quinn & Scattini have developed a booklet of approximately 70 common clauses and special conditions that can be used as annexures to a Contract. However, it should be noted that the clauses and special conditions are generic and advice should be for their application to particular sections.

We would be pleased to send the booklet (which is saved on USB drives) to any Agent who is interested in using them. Please email our marketing department at the following address if you would like to order our booklet free of charge or if you would like any further information about it: dmurdoch@quinnscattini.com.au

Duncan Murdoch, Partner, Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Duncan may be contacted on 3221 1838 between 8.30am to 5pm Monday to Friday.

In addition to residential and commercial conveyancing services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.

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