

Q&S CONVEYANCING UPDATE

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SENDING CONTRACTS BY FAX AND EMAIL

The *Electronic Transactions (Queensland) Act 2001* ("the Act") regulates the requirements of writing by electronic communication and although it has been in force for some time we have seen that many real estate transactions do not comply with the Act.

Of particular importance to agents is that when sending proposed contractual documents by fax or email to a buyer or seller or their solicitors ("the recipient") you must first obtain the recipient's prior consent.

A clause in the draft contract is not sufficient to comply with the Act. We recommend that the consent of both parties to receive the proposed contractual documents electronically is obtained by separate correspondence before sending the contractual documents.

To complicate matters, the *Property Agents and Motor Dealers Act 2000* ("PAMDA") has strict requirements on the sending of proposed contractual documents by fax or email. The following is a summary of those requirements:-

By Fax (in order):-

- 1) One page coversheet which includes a statement directing the buyer's attention to the Warning Statement, Information Sheet (if a unit) and the Proposed Contract of Sale;
- 2) PAMD Form 30C Warning Statement
- 3) BCCM Form 14 Information sheet (if a unit)
- 4) Proposed Contract of Sale
- 5) Any other documents (e.g. Disclosure Statement if a unit)

By Email (in order):-

- 1) Email message which includes a statement directing the buyer's attention to the Warning Statement, Information Sheet (if a unit) and the Proposed Contract of Sale;
- 2) Attached to the email is a single PDF document protected against unauthorised change containing only the PAMD Form 30C Warning Statement and BCCM Form 14 Information Sheet (if a unit) as the first sheets in that order followed by the Proposed Contract of Sale;
- 3) PAMDA is unclear if additional documents not in the PDF can be attached to the email and accordingly the cautious approach is to send additional documents in a separate email.

Please be aware that the above process is for sending contractual documents only and the order for signing them is not the same (e.g. PAMD Form 27C must be signed first). As there are serious consequences for not complying with the above (e.g. penalties up to \$20,000) we recommend that where possible agents deliver contractual documents by hand and have the buyers sign acknowledgements.

Richie Muir, Solicitor **Quinn & Scattini Lawyers**

This update is for your information and interest only. It is not intended to be comprehensive, and it **does not constitute and must not be relied on as legal advice**. You must seek specific advice tailored to your circumstances.

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