

Q&S CONVEYANCING NEWS

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“IT’S MY MONEY”

DISPUTE OVER MONEY HELD IN TRUST

When Land Contracts fail to complete, the Seller and Buyer may disagree over what happens to the deposit or other moneys held in trust by the real estate agent. The Property Agents and Motor Dealers Act 2000 (PAMDA) contains the mechanism for dealing with the dispute.

Failure to comply with PAMDA can result in a maximum fine of \$30,000.00 or 3 years imprisonment or a combination of a fine and imprisonment.

When a transaction is finalised, the agent may draw an amount and pay the person(s) entitled to it. This is usually paid to the agent himself to cover commission and the balance (if any) is usually paid to the Seller.

However, the matter is said not to be finalised if there is a ‘dispute’ about the monies in Trust (eg. a letter from a party disputing the ownership of trust funds).

If there is a dispute, the agent must not pay any money until he receives written notice (“a section 388 notice”) from **all** the parties stating either:-

- (a) the person who is entitled to the funds; or
- (b) that legal proceedings have started.

If no section 388 notice has been received by the agent 30 days after the agent has notice of the dispute, the agent must (within 7 days) give all parties notice (a “section 390 notice”) that:-

- (a) 30 days after this notice is given, the agent will pay the person(s) the agent believes is entitled to the amount; or
- (b) the agent can’t decide, and will keep the amount until he/she receives written notice (a section 388 notice).

If there is still no section 388 notice from all parties after this 30 day time frame has elapsed, the agent may pay the amount to the person believed to be entitled to it or keep the funds in trust as stated in the section 390 notice.

The above process is also shown in the **attached** diagram.

Richie Muir **Solicitor**

If you would like to ask any question about this or any other similar issue Richie may be contacted on 38212766 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. 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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PAMDA—HOW TO DEAL WITH DISPUTES OVER MONEY IN TRUST

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