



REAL ESTATE EXCELLENCE INDUSTRY UPDATE – June 2010

These last few weeks saw Real Estate Excellence in Bundaberg, Maryborough and Hervey Bay, where a diverse range of services were delivered for great clients which included one on one consulting sessions with a property manager and a new salesperson to the industry, a business health check, a sales training session focusing on the Do Not Call Register, Spam and Privacy Act plus Trade Practice Act requirements particularly in relation to advertising. The final two QCAT Open training sessions were also presented.

INDUSTRY UPDATE

The PAMD Amendments were due to be discussed during the 18th, 19th and 20th May parliament sittings; however they were number nine on the agenda and the government only managed to get number 4 on the agenda. The bill has been carried over to the next parliamentary sitting which is on the 8th June

(http://www.parliament.qld.gov.au/view/legislativeAssembly/tableoffice/documents/notice_paper/2010/100608-NP.pdf). It should be noted that the June parliamentary sitting will be the budget sitting as well.

During the last parliamentary sitting, the government passed some key amendments to pool safety laws. The government are yet to pass the laws that will affect us most, which is in relation to when a property is rented or sold,

The Government proposes to pass legislation later in the year that will prohibit the sale or lease of a property with a pool without a pool safety certificate issued by a licensed pool safety inspector. It is estimated that approximately 190,000 pools will be inspected over the first 10 years of the pool safety measures.

Owners will not be required to obtain a new certificate if the property is re-sold or re-leased within one year of the last certificate for shared pools or two years for non-shared pools. It is

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proposed that a record of the certificates be entered into a State-based pool register that is accessible to Local Governments.

Sourced from the explanatory notes that support the bill that has now passed
<http://www.legislation.qld.gov.au/Bills/53PDF/2010/BOLAB10.pdf>.

IN brief, the government have now passed laws that provide definitions for regulated pools, the requirements and training of licensed pool inspectors (along with their obligations), general provisions about pool safety inspectors and general provisions about regulated pools. For more information, visit http://www.realestateexcellence.com.au/useful-information-and-training-events/cat_view/8-pool-fencing. I will continue to keep subscribers of Real Estate Excellence up to date on these very important issues for our industry.

LICENSEE AND ADMINISTRATION best practice

A common question that is asked by licensees is about signage at the front of the office; particularly about the PAMD Requirements for displaying the licensee name. Refer below to what the Act requires;

From the PAMD Act

77 Display of licence

A principal licensee must display the licensee's licence at the licensee's registered office in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

From the PAMD Regulations

10 Display of licence

For section 77 of the Act, the principal licensee must display the licensee's licence in a conspicuous position at the licensee's registered office so it is clearly visible when entering the registered office.

Examples—

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1. Display in a prominent position on the reception counter.
2. Display at eye level on a wall that customers view on first entering the registered office.

From the PAMD Regulations

13 Display and publication of licensee's name

(1) This section applies for sections 123, 158, 195, 252, 273, 328 and 352 of the Act.

(2) The principal licensee must display in lettering at least 1.5cm in height at each place of business—

(a) the licensee's name followed by the word 'licensee'; and

(b) if the licensee is not the person in charge of the business at the place, the name of the person in charge at the place; and (c) the category of the licensee's licence.

Example for paragraph (c)— property agents and motor dealers licence (real estate agent)

(3) The names and category must be displayed in a conspicuous position at each of the principal licensee's places of business so it is clearly visible when entering the place of business.

Examples for subsection (3)—

1 Display in a prominent position on the reception counter.

2 Display at eye level on a wall that customers view on first entering the place of business.

(4) In addition to the requirements in subsection (2), an auctioneer who conducts an auction must display the auctioneer's name at the place of the auction—

(a) in lettering at least 1.5cm in height; and

(b) in a conspicuous position so it is clearly visible when entering the place; and (c) for the entire period of the auction.

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SALES best practice

Recently, an alarming amount of non compliance has been observed within our industry in regards to the sustainability declaration; regrettably ignorance of the law of course will not be a defence if non compliance is found by the Office of Fair Trading. It appears there may be more of a lack of required knowledge about the new laws as opposed to blatant disregard of them. The main area of non compliance appears to be referencing how people can obtain a copy of the declaration when advertising a property for sale (other than magazine, newspaper and generic for sale sign boards). Below are some tips to assist salespeople and licensees with compliance;

- **Do not assist the seller in completing the declaration; this places your agency in a position of risk should there be a claim of misrepresentation**
- **Email the seller the government declaration, the government fact sheet and government reference guide where possible to avoid agency printing**
- **The legal obligation under the Building Act is for the seller to complete and sign the declaration and provide it to their agent prior to marketing**
- **An agent cannot market a property without the sustainability declaration**
- **If the seller does not know an answer to a question on the form, guide them to the information on the form, the fact sheet and reference guide (do not tell them to leave it blank, let the government tell them that)**
- **Remind sellers that they have to make a reasonable attempt to complete the form (this requirement is stated clearly in the Building Act)**
- **Ensure that the sustainability declaration is on display at all open homes and inspections by appointment so that people entering can easily view the form**
- **Provide people with a copy as soon as practicable if they request a copy. If the person provides consent to the use of email; the declaration can be emailed. (keep records of sent items)**
- **Ensure that reference is made about how the person can obtain a copy of the declaration on all forms of marketing (except magazine and newspaper and general FOR SALE sign boards) This includes window cards, letterbox drops (advertising the one property) brochures and internet advertising. An example of best practice wording is**

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**“A person can obtain a copy of the sustainability declaration
by contacting the real estate agent”**

- **The penalties from the government are quite high for failure to comply with this law; up to \$10 000 for real estate agents and \$2000 for sellers**
- **It is recommended that agents guide sellers to the government website www.dip.qld.gov.au**
- **Agents should download the sustainability declaration from the government website www.dip.qld.gov.au and make a note of regularly checking for updates on the site.**

PROPERTY MANAGEMENT best practice

A number of consulting services during May saw a large number of offices who are still using best practice documents in the agency that state the ‘Residential Tenancies Act’ and the Small Claims Tribunal. Of course these no longer exist, and these forms need to be updated. Is it time to do a ‘quick audit of your standard letters? This is a service that Real Estate Excellence can offer; please contact me if you would like an investment proposal for this service.

A common question that I am asked is in regards to the notice period for a rent increase on a fixed term tenancy. The two months notice is not required for a rent increase from one fixed term to another. The 2 months notice for a rent increase ONLY applies if there is a special term in the lease agreement allowing for the rent to go up during the agreement. From one fixed term to another, there is no set time frame set out by law, there is only best practice. Meaning that if the lessor is offering another fixed term tenancy (a new agreement) after the expiry of the existing agreement, there is no legal requirement of notice to be given. If the lessor offers a tenant a new lease starting on the 28th May (as an example) and the new lease expires on the 27th May, the notice period given is fine as there is no ‘set time frame’. Best practice is to provide as much notice as possible. Refer to section 91 from the RTRA Act; note in particular the last line of this section taken directly from the Act.

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91 Rent increases

- (1) This section applies to increases in rent for the following—
 - (a) a periodic agreement;
 - (b) a fixed term agreement, during the term of the agreement.
 - (2) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant in the way required by this section.
 - (3) The notice must state—
 - (a) the amount of the increased rent; and
 - (b) the day from when the increased rent is payable.
 - (4) The day stated must not be earlier than 2 months after the notice is given.
 - (5) Subject to an order of a tribunal under section 92, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.
 - (6) However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement—
 - (a) provides for a rent increase; and
 - (b) states the amount of the increase or how the amount of the increase is to be worked out.
 - (7) A rent increase is payable by the tenant only if the rent is increased under this section.
 - (8) This section applies subject to section 93.
 - (9) This section does not apply if—
 - (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
 - (b) the lessor is the State and the tenant is an officer or employee of the State.
- Note—*
This section does not apply to an increase in rent from one fixed term agreement to the next.

UPCOMING OPEN Training EVENTS – June

PM CAREER DEVELOPMENT SERIES ONE – Sunshine Coast – 9th June

For more information email stacey.holt@realestateexcellence.com.au I hope this industry update from REAL ESTATE EXCELLENCE has been of benefit to you, your team and to your business.



Until next time, take care.

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