

## AMENDMENTS TO THE PROPERTY AGENTS & MOTOR DEALERS ACT 2000

The Property Agents & Motor Dealers and Other Legislation Amendment Bill 2010 became law on 1 October 2010. The major, and welcome, part of the Bill deals with amendments to the provision of warning notices. The whole of sections 363 to 370 inclusive of the *Property Agents & Motor Dealers Act 2000* are repealed and replaced. The main purpose of the amendment is to sort out the mess surrounding the giving of the warning statement, how often it needs to be given, and the order in which documents need to be handed to a party.

Solicitors, real estate agents, and the courts have long felt that this part of the Act needed reform. The Government has at last agreed. This part of the Act has been trenchantly criticized by the Courts in recent times, with comments such as "a confused mess", introducing an "unnecessary complexity and technicality" into the Act, and imposing "vague, confusing and overly technical requirements".

Under the old system, contractual documents, including the warning statement, had to be handed to the buyer in a certain order. In addition, the warning statement needed to be signed by the parties on each occasion that the contract was amended. In the case of *Fletcher v. Kakemoto*, the court tried to reduce the effect of this by saying it was not necessary for the warning statement to be signed if the amendments to the contract were minor tidying up, rather than substantial changes to the contract. However, that decision (which related to the sale of the penthouse in the Q1 Tower) has been appealed.

A warning statement in the prescribed form (which is unchanged) must be attached to the contract (along with the relevant information statement for a unit sale), but not in any particular order. A clear statement must be given to the buyer drawing his attention to the warning statement. The Bill suggests that this can be done in a covering letter using wording to the effect of "your attention is drawn to the warning statement, information sheet and proposed relevant contract accompanying this letter".

"Attached" is specifically defined in section 364 as:

- (a) if the documents are given other than by electronic communication – are attached in a secure way so that the warning statement, any information sheet and the proposed relevant contract or relevant contract appear to be a single document (it is suggested that the documents should be bound or stapled together); or
- (b) if the documents are given by electronic communication – given by electronic communication at the same time or, if the method of electronic

communication is by fax, as near as possible to the same time having regard to the normal operation of fax machines.

In other words, the documents should be sent as a single fax or email.

The amendments expressly provide that, provided that the residential property involved and the parties to the contract are the same, it is not necessary for the warning statement to be signed each time the contract is amended and presented to the other party for consideration (confirming the *Fletcher* case).

The buyer may terminate the contract if a clear statement directing his attention to the warning statement is not given, by giving signed, dated notice of termination at any time before the contract settles but not later than 90 days after the buyer receives a copy of the contract from the seller. The buyer may not terminate the contract if, regardless of the lack of the notice drawing the warning statement to his attention, the buyer signed the warning statement before signing the contract. It may be a good idea for agents to put a note on the file stating the order in the documents were signed.

Similar provisions apply to the documents required under the *Body Corporate & Community Management Act 1997*.

It is to be hoped that these amendments will remove the technicalities associated with the Act, and prevent arguments over whether or not a warning statement was in fact the first document in a bundle, or whether the means by which the statement has been attached complied with the Act.