

4 July 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Research Director

Land Sales and Other Legislation Amendment Bill 2014

The Real Estate Institute of Queensland (**REIQ**) appreciates the opportunity to make a submission in relation to the *Land Sales and Other Legislation Amendment Bill 2014* (Bill) which was introduced into Parliament on 3 June 2014.

The focus of our submission relates to Part 2 of the Bill which seeks to amend the *Agents Financial Administration Act 2014* and deals with disputed trust account funds.

The REIQ welcomes these amendments which simplify the process for real estate practitioners dealing with disputed trust account funds.

The current provisions contained in the *Property Agents and Motor Dealers Act 2000* (PAMD Act) limit the ability of a licensee to pay out disputed amounts. Currently, licensees may only pay trust funds in dispute where:

1. a written notice from all parties to the transaction is provided to the licensee stating the person who is entitled to the amount in dispute;
2. legal proceedings have been commenced to determine who is entitled to the amount in dispute;
3. the licensee pays the amount under section 390(3); this process can only be triggered where the agent has received a written notice from a party to the transaction that ownership of the fund or funds is in dispute.

As outlined above, the current provisions of the PAMD Act require a party to the transaction to take some form of positive action to trigger the real estate agent's ability to transfer trust account funds to the relevant party where a dispute has arisen. This is problematic in circumstances where the parties to a transaction are unwilling or unable to come to a mutual written agreement and/or are not prepared to issue legal proceedings. Similarly, in order for the agent to utilise the process under section 390(3) of the PAMD Act, a written notice section 387(1)(b) must first be received. Again, this requires a party to the transaction to take some form of positive action before the funds can be dealt with.

Where the parties to a transaction are in dispute and one of the requirements outlined in paragraphs 1, 2 or 3 are not met, the real estate agent is not entitled to transfer the funds from their trust account and must continue to hold those disputed funds for a potentially indefinite period. For a real estate agent, this causes considerable inconvenience, expense and administrative nuisance.

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It is also concerning that real estate agents face serious penalties of up to \$22,000 or 3 years imprisonment in circumstances where they do not strictly comply with the requirements of the Act in relation to disputed trust account funds.

In view of the matters outlined above, the REIQ welcomes the proposed amendments to the process for dealing with disputed trust account funds. In particular, we are pleased with the proposed new section 25 which allows a real estate agent to take certain action where they “*consider*” a dispute “*may arise*”. This allows the agent to take action without the need for a party to a transaction to explicitly state in writing that a dispute has arisen.

We also welcome the new proposed section 26 which provides real estate agents with a clear and simple process to follow where a dispute arises. This enables a real estate agent to issue a written notice to the parties stating who they “*consider*” to be entitled to the disputed funds. We support the outcome of this process which allows a real estate agent to pay the disputed funds to the relevant identified party (no earlier than 60 days after the notice) unless:

- legal proceedings are issued by a party; or
- the parties come to a mutual agreement.

The above process is straightforward and relatively simple. Importantly, it allows agents to take independent action without having to rely on and wait for the parties to the transaction to take action.

The REIQ does however support the ability of the real estate agent to provide the written notice by way email and other electronic means.

The REIQ is pleased that the amendments propose to remove liability from the real estate agent in relation to the payment of disputed trust account funds. Although a real estate agent has the ability to determine who they consider is entitled to the funds, they will not be held liable where it is subsequently determined that that party was not actually entitled to those monies. This protection is of critical importance for real estate agents who should not be held liable in circumstances where the parties have had an ability to act in response to the agent’s written notice.

We also support the preservation of an affected party’s right to pursue their legal rights and to take action to recover the funds if and when the funds have been paid to the incorrect party.

Although we support the new options and processes for dealing with trust funds in dispute, it is important that real estate agents retain the right to hold disputed trust funds if they wish to do so. In some instances, real estate agents may determine they prefer to hold the funds until such time as legal proceedings are commenced and/or the parties reach a mutual agreement. We are pleased the real estate agents ability to retain the funds has been preserved.

The REIQ and its members look forward to the passing of the Bill. We have intentionally limited our comments in this submission to issues we consider to be particularly critical to the real estate profession.

The REIQ welcomes the opportunity to appear before the Legal Affairs and Community Safety Committee to discuss the matters outlined in this submission.

We confirm that no aspect of this submission is confidential.

If you would like to discuss any aspect of this submission, please do not hesitate to contact the author by email: amercorella@reiq.com.au or by telephone: 3249 7325.

Yours faithfully



Antonia Mercorella
Acting Chief Executive Officer