

22 January 2014

Property Occupation Bill 2013
Submission 022



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

Queensland Division

Suite 202, Level 2, 131 Leichhardt St,
Spring Hill QLD 4000
PO Box 106, Spring Hill QLD 4004
T 07 3832 3139
F 07 3839 0438
E qld@api.org.au

Dear Sir/Madam,

Thank you for the opportunity to submit in relation to the changes to the former *Property Agents and Motor Dealers Act*. Please accept our apologies for the delay in providing our submission.

As the Committee may be aware, certain requirements and documentation were added to the process of property transactions in Queensland by previous Queensland Governments to protect the consumer. Some of these were the result of what became known as “two tiered marketing” in Queensland where uninformed purchasers were pressured to make quick decisions about purchasing property, often with no recourse.

As a result a previous Queensland Government announced cooling off periods and forms such as Form 27 and Form 30 were created. These forms ensured that purchasers were informed about how to access independent legal and property advice and they also gave purchasers information about how much each party involved in the sale would benefit financially.

For most Queenslanders, property represents the largest investment of their lives. As such there is a genuine need for those purchasers, particularly those who perhaps are not the most informed purchasers, to have protection afforded to them and to ensure that they are not taken advantage of by those who would seek to benefit in the way that those involved in the previous “two tier marketing” once did. There is no equality of bargaining between a consumer and a developer of a large scale development. The maxim ‘caveat emptor’ arose at a time when transactions were much less complex.

Form 30C

Warning statement

We understand that the new legislation seeks to remove the need for Form 30C (a Warning Statement) to be included as a separate document. Currently, Form 30C must be brought to the attention of any purchaser by the seller or agent. Whilst we are unsure of the exact reason for this change, we understand that real estate agents have reported that contracts have been terminated when the legal requirements around this particular form have not been adhered to.

We understand that a statement along the same lines as the Form 30C will form part of the new contract but would query why such an important warning statement is being removed as a stand-alone document attached to the contract when what it seeks to achieve is commendable. That is that a purchaser has received appropriate legal advice about the contract they are to sign and that they are paying a fair and reasonable price for the property they are purchasing.

Instead of abolishing Form 30C as a stand-alone document attached to the contract, it could be amended to require compliance in substance rather than in form as under current legislation.

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Form 27C

Selling agent's disclosure to buyer

The purpose of this form is to make a purchaser aware of relationships that the selling agent has with persons to whom they refer the purchaser to, and of benefits that the selling agent and other people receive from the sale. It must be completed by the following:

- Real estate agent
- Real estate salesperson acting for a real estate agent
- Property developer
- Property developer salesperson
- Person acting as a real estate agent although not authorised by a licence to do so
- Person acting as a property developer although not authorised by a licence to do so

We understand the requirements around the need to disclose have been amended in the new legislation. The Institute believes that any party involved in the sale of property in Queensland should be required to make a statement to the purchaser about who may benefit from the sale and how those parties are related. Failure for this information to be available to the purchaser could lead them to rely on advice from a related party or from a party who may be financially involved in the sale.

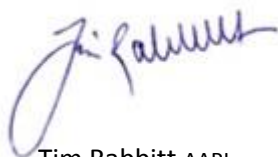
The API also understands that certain types of licencing and registration requirements may be removed as part of the changes. We understand that property developer salespersons are part of those proposed changes. With the recent collapse of the proposed National Occupational Licensing scheme, the API would prefer to see those involved in the sale of real estate in Queensland licensed by the State.

The Australian Property Institute understand that a number of the changes encompassed in the new legislation have been made in consultation with various property industry bodies in Queensland and with a desire to reduce the administrative burden.

The Australian Property Institute would like to see the intent of the current legislation in Forms 27C and 30C retained in essence by appropriate amendments for the benefit of the community at large.

Should the Legal Affairs and Community Safety Committee wish to discuss the contents of this submission please do not hesitate to contact Andrew Bell at the Australian Property Institute.

Yours sincerely



Tim Rabbitt AAPI
Queensland President.