



Property Update

Tree Disputes and New Disclosure Obligations

The *Neighbourhood Disputes Resolution Act 2011* commenced on 1 November 2011 replacing the *Dividing Fences Act 1953*.

Under the new legislation sellers of both residential and commercial property will need to give copies of any existing Queensland Civil and Administrative Tribunal (QCAT) Applications or Orders concerning trees to prospective buyers prior to the buyer entering into the contract.

What are the implications to you

If the seller fails to provide a copy of the QCAT Application or Order to the buyer prior to the buyer entering into the contract, then:

- (a) The buyer may terminate the contract any time before settlement;
- (b) the deposit must be refunded to the buyer; and
- (c) the seller and the person who prepared the contract (ie. the agent) are liable to pay the buyers reasonable legal and other expenses incurred in relation to the sale.

If a copy of any QCAT tree application is provided to the buyer prior to entering into the contract, the buyer is automatically joined as a party to the QCAT proceedings. If a copy of any QCAT tree order is provided to the buyer before the buyer enters into the contract, the buyer is responsible for completing any work required under the order after settlement.

What you need to do:

When preparing a contract of sale for presentation to a buyer, you need to ask the seller whether there are any QCAT applications or orders in existence regarding trees on the property. If there are, a copy should be attached to the contract and the buyer should initial each page to acknowledge receipt.

The REIQ Contracts will be amended in the near future (we expect this to be in early December 2011) and we will provide another update at that time.

As you can see failing to provide a copy of a QCAT tree application or order to a buyer prior to entering into the contract has the same repercussions as failing to attach a Form 30c therefore you need to educate your selling agents and contract administration staff immediately.

For further information contact Paul McHugh (paulm@tml.com.au)

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This document can also be found on our website at www.tml.com.au.

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[Email Update](#) – New Pool Registration Requirements and Partner becomes accredited specialist - November 2011

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