

SENDING A PROPOSED HOUSE & LAND CONTRACT TO A BUYER FOR SIGNATURE UNDER THE PROPERTY AGENTS AND MOTOR DEALERS ACT

Recent amendments to the PAMDA have addressed the technological realities of today by providing for the electronic transmission of contracts and associated documents.

The amendments came about as a result of a recent Court of Appeal decision in Queensland that dealt with the issue of whether a faxed contract and Form 30C Warning Statement satisfied the requirements of the PAMDA, and whether the Form 30C was "attached" to the Contract in the facsimile transmission.

The unfortunate reality of the legislation is that it sets out a detailed and technical procedure for the delivery of both proposed contracts and signed contracts.

This Factfinder deals with the delivery of Proposed Contracts only (ie contracts that have not been signed by the Buyer).

DELIVERY OF RESIDENTIAL HOUSE AND LAND CONTRACT BY HAND

Documents must be delivered in the following order:

1. **PAMD Form 27C**-this document must not be attached to any other documents. It should also be presented to and signed by the Buyer prior to presenting any other documents to the Buyer. The Agent should also ensure that the signed document is received before presenting any other documents to the Buyer;
2. **Cover Page** - this letter must direct the attention of the Buyer to the Warning Statement in the Contract. It must not be stapled or bound with the Contract. It should be handed to the Buyer as a separate document prior to the Warning Statement and Contract;
3. **PAMD Form 30C Warning Statement and Relevant Contract, and Addendums to Contract**- these documents must be either stapled or bound together, with the Warning Statement appearing as the first or top page. The Seller or the Sellers Agent must direct the attention of the Buyer to the Warning Statement and Contract.

DELIVERY OF RESIDENTIAL HOUSE AND LAND CONTRACT BY POST

Documents must be posted in the following order:

1. **Covering letter**- this letter must direct the Buyer to read & sign the PAMD Form 27C before signing any other documents. It must then direct the Buyer to read the Cover Page enclosed with the letter before it reads any of the other documents;

2. **PAMD Form 27C** - this document must not be attached to any other documents and must be positioned prior to the other documents;
3. **Cover Page**- this page must not be attached to any other documents and must direct to the attention of the Buyer to the Warning Statement, and the Contract;
4. **PAMD Form 30C Warning Statement and Relevant Contract, and Addendums to Contract**- these documents must be either stapled or bound together, with the Warning Statement appearing as the first or top page.

DELIVERY OF RESIDENTIAL HOUSE AND LAND CONTRACT BY FAX

The following procedure should be adopted when sending Contracts by fax:

1. **First Fax**- this must be a separate facsimile transmission to any other documents. It should consist of documents in the following order:
 - a. Covering letter- this letter should instruct the Buyer to read & sign the PAMD Form 27C before the Buyer signs any other documents. It should instruct the Buyer to fax the signed PAMD Form 27C back to you before you will send the Contract by fax. You should keep a transmission confirmation report with any documentation faxed as this may be required to prove the transmission went through;
 - b. PAMD Form 27C.
2. **Second fax**- this document should be sent as one single facsimile transmission and should consist of documents in the following order:
 - a. Cover Page - this page must be a single page and contain a clear statement directing the attention of the Buyer to the Warning Statement, and the Contract;
 - b. PAMD Form 30C Warning Statement;
 - c. Contract; and
 - d. any other documents and Addendums to the Contract

DELIVERY OF RESIDENTIAL HOUSE AND LAND CONTRACT BY EMAIL

The following procedure should be adopted when sending Contracts by email:

1. **First Fax**- this must be a separate facsimile transmission (not an e-mail) to any other documents. It should consist of documents in the following order:
 - a. Covering letter- this letter should instruct the Buyer to read & sign the PAMD Form 27C before the Buyer signs any other documents. It should instruct the Buyer to fax the signed PAMD Form 27C back to you before you will send the Contract by e-mail. You

- should keep a transmission confirmation report with any documentation faxed as this may be required to prove the transmission went through;
- b. PAMD Form 27C.

2. **E-mail-** the e-mail should be sent as follows:

- a. Cover Message- this should be written as part of the e-mail containing the clear statement directing the Buyers attention to the PAMD Form 30C Warning Statement and the Contract, and should direct the buyer to open the single attachment to the e-mail;
- b. A single file attachment must then be attached to the e-mail in a PDF file that is protected against unauthorised changes and must consist only of the following components in the following order:
 - i. the PAMD Form 30C Warning Statement;
 - ii. the Contract; and
 - iii. any Addendums to the Contract.

What if I have made an error in this procedure?

If an error has been made the Seller or the Sellers agent can amend the error only if both parties have not signed the Contract.

The Seller or the Sellers agent must notify the proposed Buyer or the Buyers Agent of the failure to comply. The notice must:

1. identify the failure to comply;
2. state that the proposed relevant Contract is withdrawn; and
3. advise whether new documents complying with the requirements of the Act will be given to the Buyer

CONSEQUENCES OF NON-COMPLIANCE

If these statutory procedures are not followed:

1. The Buyer may terminate the contract at any time up until settlement; and
2. The Seller all the Seller's Agent is deemed to have committed an offence under the Act and can be fined up to \$15,000.

Ferguson Cannon Lawyers have extensive experience in conveyancing and property law. For any queries please contact Byron Cannon, Director, Ferguson Cannon on 07 5443 6600.

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