



Queensland

Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

Act No. 30 of 2010



Queensland

Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

Contents

		Page
Part 1	Preliminary	
1	Short title	6
2	Commencement	6
Part 2	Amendment of Property Agents and Motor Dealers Act 2000	
3	Act amended in pt 2 and schedule	6
4	Amendment of ch 11 (Residential property sales)	6
5	Insertion of new ch 19, pt 8	19
	Part 8 Transitional provisions for Property Agents and Motor Dealers and Other Legislation Amendment Act 2010	
644	Definitions for pt 8.	19
645	Matters relating to termination of pre-amendment relevant contracts	19
646	Matters relating to withdrawal of offers under s 365(3) of pre-amended chapter 11	20
647	Termination relating to proposed relevant contract under pre-amended chapter 11 that became or becomes a relevant contract	20
648	Pre-amendment relevant contract may be terminated under s 370A	21
649	Matters relating to cooling-off period for pre-amendment relevant contracts	22
650	Offences	23
651	Amendment of subordinate legislation does not affect powers of Governor in Council	23
Part 3	Amendment of the Body Corporate and Community Management Act 1997	
6	Act amended	23
7	Amendment of s 205A (Definitions for ch 5)	24

Contents

8	Amendment of s 205B (Relationship with Electronic Transactions (Queensland) Act)	24
9	Amendment of s 206 (Information to be given by seller to buyer)	25
10	Replacement of s 206A (How the information sheet must be given for s 206(5))	25
	206A Termination of contract for contravention of the Property Agents and Motor Dealers Act 2000, s 368A(2)(c)(ii)	25
11	Amendment of s 209 (Cancelling contract for inaccuracy of disclosure statement)	26
12	Amendment of s 210 (Cancellation under this part)	27
13	Amendment of s 212A (Buyer may cancel if there is no proposed community management statement)	27
14	Amendment of s 213 (Information to be given by seller to buyer)	28
15	Replacement of s 213A (How the information sheet must be given for s 213(5))	28
	213A Termination of contract for contravention of the Property Agents and Motor Dealers Act 2000, s 368A(2)(c)(ii)	29
16	Amendment of s 214 (Variation of disclosure statement by further statement)	30
17	Amendment of s 217 (Cancelling contract for inaccuracy of statement)	30
18	Amendment of s 218 (Cancellation under this part)	30
19	Amendment of s 221 (Part's purpose)	31
20	Amendment of s 222 (Effect of warranties and right to cancel) . .	31
21	Amendment of s 224 (Cancellation for breach of warranty)	31
22	Insertion of new ch 8, pt 8	32
	Part 8 Transitional provisions for the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010	
	368 Definitions for pt 8.	32
	369 Matters relating to cancellation of pre-amendment contracts	33
	370 Termination relating to particular contracts for sale of lots that are not residential property	33
	371 Termination relating to particular contracts for sale of lots that are residential property	34
	372 Termination relating to particular contracts for sale of proposed lots that are not residential property. . . .	35
	373 Termination relating to particular contracts for sale of proposed lots that are residential property	36

23	Amendment of sch 6 (Dictionary)	38
Part 4	Other amendments	
24	Legislation amended in schedule	39
Schedule	Other amendments	40
	Property Agents and Motor Dealers Act 2000	40
	Property Agents and Motor Dealers Regulation 2001	50



Queensland

Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

Act No. 30 of 2010

An Act to amend the Property Agents and Motor Dealers Act 2000, the Body Corporate and Community Management Act 1997 and the Property Agents and Motor Dealers Regulation 2001 for particular purposes

[Assented to 1 September 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Property Agents and Motor Dealers and Other Legislation Amendment Act 2010*.

2 Commencement

This Act commences on 1 October 2010.

Part 2 Amendment of Property Agents and Motor Dealers Act 2000

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Property Agents And Motor Dealers Act 2000*.

4 Amendment of ch 11 (Residential property sales)

Chapter 11, parts 1 to 3—
omit, insert—

‘Part 1 Preliminary

‘363 Purposes of ch 11

‘The purposes of this chapter are—

-
- (a) to give persons who enter into relevant contracts as buyers a cooling-off period; and
 - (b) to require all proposed relevant contracts and relevant contracts for the sale of residential property in Queensland to have consumer protection information attached, including information stating that a relevant contract is subject to a cooling-off period; and
 - (c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers; and
 - (d) to impose obligations on seller's agents, under part 5, about the advertising and availability of information on sustainable housing measures for the sale of particular residential property.

'364 Definitions for ch 11

'In this chapter—

attached, in relation to a warning statement, any information sheet and a proposed relevant contract or relevant contract, means—

- (a) if the documents are given other than by electronic communication—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; or

Examples of ways a warning statement and any information sheet may be attached to a proposed relevant contract or relevant contract—

- binding
 - stapling
- (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

[s 4]

time having regard to the normal operation of fax machines.

Example—

by including the documents in a single email

benefit means monetary or other benefit.

business day means a day other than a Saturday, Sunday or public holiday.

buyer, in relation to a matter, includes the buyer's agent authorised to act for the buyer in relation to the matter.

cooling-off period see section 369.

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

formed on a sale by auction means formed on sale by auction—

- (a) directly on the fall of the hammer, by outcry; or
- (b) directly at the end of another similar type of competition for purchase.

Examples—

- 1 A contract for the sale of property is formed on a sale by auction when the auctioneer declares the property sold on the fall of the hammer.
- 2 A contract for the sale of property is not formed on a sale by auction when the property is passed in at auction and a bidder subsequently negotiates and purchases the property.
- 3 A contract for the sale of property is not formed on a sale by auction when the contract arises directly out of a sale by tender process.

information sheet means an information sheet in the form approved under the *Body Corporate and Community Management Act 1997*, section 206(6) or 213(5A).

relevant contract means a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction.

seller, in relation to a matter, includes the seller's agent authorised to act for the seller in relation to the matter.

termination penalty, in relation to a relevant contract, means an amount equal to 0.25% of the purchase price under the relevant contract.

unit sale means a sale of a lot included in a community titles scheme, or proposed to be included in a community titles scheme, within the meaning of the *Body Corporate and Community Management Act 1997*.

warning statement means a statement in the approved form that includes the information mentioned in section 368(1).

'365 Relationship with Electronic Transactions (Queensland) Act

'To remove any doubt, it is declared that the use of electronic communication under this chapter is subject to the *Electronic Transactions (Queensland) Act 2001*.

Note—

For example, see the *Electronic Transactions (Queensland) Act 2001*, section 11 for a requirement about consent and section 24 for rules about when an electronic communication is received.

'Part 2 Independence of lawyers and particular valuations

'366 Lawyer's disclosure to buyer about independence

- '(1) This section applies if a proposed buyer or buyer (in either case, the *buyer*) engages a lawyer in relation to the proposed purchase or purchase of a residential property under a proposed relevant contract or a relevant contract.

[s 4]

- '(2) The lawyer must give the buyer a lawyer's certificate in the approved form and explain to the buyer the purpose and nature of the certificate.
- '(3) The lawyer's certificate must be signed and dated by the lawyer and must state—
 - (a) whether the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and whether the lawyer has a business, family or other relationship with any of those persons; and
 - (b) whether the lawyer has received, is receiving, or expects to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer; and
 - (c) the lawyer has explained to the buyer the purpose and nature of the certificate.

'367 Buyer to receive copy of property valuation buyer pays for

- '(1) This section applies if, for a relevant contract—
 - (a) it is a term of the relevant contract that the buyer must pay for a valuation of the property that, under the relevant contract, is not required to have been given to the buyer before the relevant contract is signed by the buyer; or
 - (b) the seller or the seller's agent otherwise requires that the buyer must pay for a valuation of the property that is not required to be given or to have been given to the buyer before the relevant contract is signed by the buyer.
- '(2) Despite the term or requirement, the seller or seller's agent commits an offence if the seller or agent fails to give the buyer a copy of the valuation before the relevant contract is signed by the buyer.

Maximum penalty—200 penalty units.

- ‘(3) The term or requirement is effective only if, before the relevant contract was signed by the buyer, the buyer received the valuation and, in writing, acknowledged the receipt.
- ‘(4) Subsection (3) does not affect subsection (2).
- ‘(5) A contravention of subsection (2) does not affect the validity of the relevant contract.

‘Part 3 Warning statements for proposed relevant contracts and relevant contracts

‘368 Content and effectiveness of warning statement

- ‘(1) A warning statement for a proposed relevant contract or relevant contract must include the following information—
 - (a) the relevant contract is subject to a cooling-off period;
 - (b) when the cooling-off period starts and ends;
 - (c) a recommendation that the proposed buyer or buyer seek independent legal advice about the proposed relevant contract or relevant contract before the cooling-off period ends;
 - (d) a recommendation that the proposed buyer or buyer seek an independent valuation of the property before the cooling-off period ends;
 - (e) what will happen if the buyer terminates the relevant contract before the cooling-off period ends;
 - (f) the percentage of the purchase price that will not be refunded from the deposit if the relevant contract is terminated before the cooling-off period ends;

[s 4]

- (g) if the seller under the proposed relevant contract or relevant contract is a property developer, that a person who suffers financial loss because of, or arising out of, the person's dealings with a property developer or the property developer's employees can not make a claim against the claim fund.
- '(2) A statement purporting to be a warning statement is of no effect unless the words on the statement are presented in substantially the same way as the words are presented on the approved form.

'368A Warning statement etc. if proposed relevant contract is given to buyer for signing

- '(1) This section applies—
- (a) if a proposed relevant contract is given to a proposed buyer by a seller for signing; and
 - (b) whether or not the proposed relevant contract has been signed by the seller.
- '(2) When the seller gives the proposed relevant contract to the proposed buyer the seller must—
- (a) have a warning statement attached to the proposed relevant contract; and
 - (b) if the proposed relevant contract relates to a unit sale, have an information sheet attached to the proposed relevant contract; and
 - (c) give the proposed buyer a clear statement directing the proposed buyer's attention to—
 - (i) the warning statement and proposed relevant contract; and
 - (ii) if the proposed relevant contract relates to a unit sale, the information sheet.

Example of a clear statement—

Suppose that when a proposed relevant contract for a unit sale, warning statement and information sheet are given to a proposed

buyer those documents are accompanied by a covering letter.
The letter could include a clear statement as follows—

‘Your attention is drawn to the warning statement, information sheet and proposed relevant contract accompanying this letter.’.

- ‘(3) To remove any doubt, it is declared that a person contravenes subsection (2)(c)(i) or (ii) if at the time the statement is given the warning statement or information sheet is not attached to the proposed relevant contract.
- ‘(4) For this section a proposed relevant contract does not become another proposed relevant contract merely because, as a result of negotiations, the terms and conditions of the proposed relevant contract change if the residential property concerned and the parties remain the same.
- ‘(5) For subsection (4) it is immaterial whether the proposed relevant contract is textually amended to show the changed terms and conditions or another proposed relevant contract form is prepared that incorporates the changes.
- ‘(6) If subsection (2) is contravened—
- (a) if the seller personally gave the proposed relevant contract—the seller personally; or
 - (b) if the seller’s agent gave the proposed relevant contract—the seller’s agent;
- commits an offence.
- Maximum penalty—200 penalty units.
- ‘(7) It is a defence to a prosecution for an offence against subsection (6) for the seller or the seller’s agent to prove that the seller or the seller’s agent gave notice to the proposed buyer under section 368B.
- ‘(8) If there are 2 or more proposed buyers relating to the proposed relevant contract and subsection (2) is complied with in relation to at least 1 of the proposed buyers, the subsection is taken to have been complied with in relation to each of the proposed buyers.

[s 4]

‘368B Defence for s 368A(6)

- ‘(1) This section applies if, before a proposed relevant contract becomes a relevant contract, the seller or the seller’s agent contravenes a requirement of section 368A(2) for the proposed relevant contract.
- ‘(2) For the defence mentioned in section 368A(7), the seller or the seller’s agent may notify the proposed buyer of the failure to comply at any time before the proposed relevant contract becomes a relevant contract.
- ‘(3) The notice must identify the failure to comply and—
 - (a) state that the proposed relevant contract is withdrawn; and
 - (b) advise whether new documents complying with the requirements of section 368A(2) will be given to the proposed buyer.

‘368C Warning statement must be attached to relevant contract

- ‘(1) This section applies when a seller gives a buyer a copy of the relevant contract.
- ‘(2) The seller must—
 - (a) have the warning statement mentioned in section 368A(2)(a) attached to the relevant contract; and
 - (b) if the relevant contract relates to a unit sale, have the information sheet mentioned in section 368A(2)(b) attached to the relevant contract.
- ‘(3) If subsection (2) is contravened—
 - (a) if the seller personally gave the buyer a copy of the relevant contract—the seller personally; or
 - (b) if the seller’s agent gave the buyer a copy of the relevant contract—the seller’s agent;

commits an offence.

Maximum penalty for subsection (3)—200 penalty units.

[s 4]

- ‘(3) The lawyer’s certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—
- (a) the lawyer is independent of the seller, the seller’s agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and has no business, family or other relationship with any of those persons;
 - (b) the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer;
 - (c) the lawyer has explained to the buyer—
 - (i) the effect of a relevant contract in terms of the proposed relevant contract; and
 - (ii) the purpose and nature of the certificate; and
 - (iii) the legal effect of the buyer giving the certificate to the seller.

‘369B Shortening cooling-off period

- ‘(1) A buyer under a relevant contract may only shorten the cooling-off period for the relevant contract by giving the seller a lawyer’s certificate in the approved form.
- ‘(2) The lawyer’s certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—
- (a) the lawyer is independent of the seller, the seller’s agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and has no business, family or other relationship with any of those persons;

-
- (b) the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer;
 - (c) the lawyer has explained to the buyer—
 - (i) the effect of the relevant contract; and
 - (ii) the purpose and nature of the certificate; and
 - (iii) the legal effect of the buyer giving the certificate to the seller.
- ‘(3) The giving of a lawyer’s certificate under this section is effective to shorten the period to 5p.m. (or another stated time) on the day stated in the certificate.

‘Part 3B Terminating relevant contracts

‘370 **Buyer may terminate relevant contract in certain circumstance if clear statement is not given under s 368A(2)(c)(i)**

- ‘(1) This section applies if a seller personally or a seller’s agent fails to comply with section 368A(2)(c)(i).
- ‘(2) Subject to subsections (3) and (4), if the proposed relevant contract concerned becomes a relevant contract, the buyer may terminate the relevant contract at any time before it settles by giving signed, dated notice of termination to the seller.
- ‘(3) The buyer may not terminate the relevant contract if the buyer signed the warning statement attached to the proposed relevant contract under section 368A(2)(a) before the buyer signed the proposed relevant contract.

[s 4]

- ‘(4) The termination must happen not later than 90 days after the day the buyer receives a copy of the relevant contract from the seller.
- ‘(5) The notice of termination must state that the relevant contract is terminated under this section.
- ‘(6) If the relevant contract is terminated, the seller must, within 14 days after the termination, refund any deposit paid under the relevant contract to the buyer.
Maximum penalty—200 penalty units.
- ‘(7) If the relevant contract is terminated, the seller personally or the seller’s agent is liable to the buyer for the buyer’s reasonable legal and other expenses incurred by the buyer in relation to the relevant contract after the buyer signed the relevant contract.
- ‘(8) An amount payable to the buyer under this section is recoverable as a debt.

‘370A Terminating relevant contract during cooling-off period

- ‘(1) A buyer who has not waived the cooling-off period for a relevant contract under section 369A may terminate the contract at any time during the cooling-off period or, if that period has been shortened under section 369B, the shortened period, by giving a signed, dated notice of termination to the seller.
- ‘(2) The notice of termination must state that the relevant contract is terminated under this section.
- ‘(3) The seller may deduct from any deposit paid under the relevant contract an amount not greater than the termination penalty.
- ‘(4) The seller must, within 14 days after the relevant contract is terminated, refund to the buyer—
 - (a) any deposit paid under the relevant contract; or

- (b) the balance of any deposit paid under the relevant contract after deducting an amount of not more than the termination penalty.

Maximum penalty—200 penalty units.

- ‘(5) An amount payable to the buyer under subsection (4) is recoverable as a debt.’.

5 Insertion of new ch 19, pt 8

Chapter 19, after section 643—

insert—

‘Part 8 Transitional provisions for Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

‘644 Definitions for pt 8

‘In this part—

amended chapter 11 means chapter 11 as in force after the commencement.

commencement means the commencement of this section.

pre-amended chapter 11 means chapter 11 as in force before the commencement.

pre-amendment relevant contract means a contract that is a relevant contract under pre-amended chapter 11 immediately before the commencement.

‘645 Matters relating to termination of pre-amendment relevant contracts

- ‘(1) A pre-amendment relevant contract can not be terminated under pre-amended chapter 11 after the commencement.

[s 5]

- ‘(2) The termination, under pre-amended chapter 11, of a pre-amendment relevant contract having effect immediately before the commencement continues to have effect.

‘646 Matters relating to withdrawal of offers under s 365(3) of pre-amended chapter 11

- ‘(1) Subsection (2) applies if, immediately before the commencement, a buyer under a relevant contract could have withdrawn the offer to purchase under section 365(3) of pre-amendment chapter 11 because the buyer and seller were not bound by the relevant contract under section 365(1) of pre-amendment chapter 11.
- ‘(2) The buyer can not withdraw the offer for that reason after the commencement.
- ‘(3) The withdrawal of an offer to purchase under section 365(3) of pre-amendment chapter 11 having effect immediately before the commencement continues to have effect.

‘647 Termination relating to proposed relevant contract under pre-amended chapter 11 that became or becomes a relevant contract

- ‘(1) This section applies if a proposed relevant contract under pre-amended chapter 11 was given to a proposed buyer by a seller or a seller’s agent before the commencement and the proposed relevant contract became or becomes a relevant contract before, on or after the commencement.
- ‘(2) The relevant contract may be terminated under section 370 and, for that purpose, the section applies with all necessary and convenient changes and the changes mentioned in subsection (3).
- ‘(3) For applying section 370 in relation to the relevant contract—
 - (a) a reference in subsection (1) of the section to ‘fails to comply with section 368A(2)(c)(i)’ is taken to be a reference to ‘failed to give the proposed buyer under the proposed relevant contract a clear statement directing

-
- the proposed buyer's attention to a warning statement and the proposed relevant contract when the seller or the seller's agent gave the proposed relevant contract to the proposed buyer'; and
- (b) the reference in subsection (2) of the section to 'becomes' is taken to be a reference to 'became or becomes'; and
- (c) in subsection (3) of the section all words from 'if' to '368A(2)(a)' are taken to be omitted and to be replaced by the words 'if the warning statement was attached to the proposed relevant contract and the buyer signed the warning statement'; and
- (d) the reference in subsection (4) of the section to 'receives' is taken to be a reference to 'received or receives'.
- '(4) For section 370(1) as applying under subsection (3)(a), it is declared that a person failed to give a clear statement directing attention to the warning statement if, at the time the clear statement was given, the warning statement was not attached to the proposed relevant contract.
- '(5) For applying section 370 as mentioned in subsections (2) to (4)—
- (a) a reference in that section to a warning statement is a reference to a warning statement under pre-amended chapter 11; and
- (b) the word 'attached' has the meaning it has in amended chapter 11.
- '(6) In this section—
- attached* see section 364.

'648 Pre-amendment relevant contract may be terminated under s 370A

- '(1) A pre-amendment relevant contract may be terminated under section 370A and, for that purpose, the section applies with all

[s 5]

necessary and convenient changes and with the changes mentioned in subsection (2).

- ‘(2) For applying section 370A, in relation to a pre-amendment relevant contract for which the cooling-off period under pre-amended chapter 11 had started but not ended before the commencement, the references in that section to sections 369A and 369B are taken to be references to sections 369 and 370 of pre-amended chapter 11.

‘649 Matters relating to cooling-off period for pre-amendment relevant contracts

- ‘(1) The cooling-off period for a pre-amendment relevant contract that has started under pre-amended chapter 11 but not ended before the commencement is the cooling-off period for the contract under amended chapter 11.
- ‘(2) The waiving or shortening, under pre-amended chapter 11, of the cooling-off period relating to a pre-amendment relevant contract having effect immediately before the commencement continues to have effect for amended chapter 11.
- ‘(3) Subsection (4) applies if, immediately before the commencement, the cooling-off period for a pre-amendment relevant contract had not started because the buyer under the contract was not bound by it under section 365 of pre-amended chapter 11.
- ‘(4) For the definition *cooling-off period* applying for amended chapter 11—
- (a) if, at the commencement, the buyer has received from the seller a copy of the pre-amendment relevant contract—the buyer is taken to have received the copy on the commencement; or
- (b) otherwise—the definition applies according to its terms.

‘650 Offences

- ‘(1) This section applies if a person is alleged to have committed, before the commencement, an offence against a prescribed provision.
- ‘(2) Proceedings for the offence may be continued or started and the court may hear and decide the proceedings, as if the *Property Agents and Motor Dealers and Other Legislation Amendment Act 2010* had not been enacted.
- ‘(3) This section applies despite the Criminal Code, section 11.
- ‘(4) In this section—

prescribed provision means chapter 11, part 1, 2 or 3, or section 130, 170, 207, 265, 281, 327(1)(b) or (3)(b), 341 or 375 of the pre-amended Act.

pre-amended Act means this Act as in force before the commencement.

‘651 Amendment of subordinate legislation does not affect powers of Governor in Council

‘The amendment of the *Property Agents and Motor Dealers Regulation 2001* by the *Property Agents and Motor Dealers and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

Part 3 Amendment of the Body Corporate and Community Management Act 1997

6 Act amended

This part amends the *Body Corporate and Community Management Act 1997*.

[s 7]

7 Amendment of s 205A (Definitions for ch 5)

(1) Section 205A, definitions *attach* and *warning statement*—
omit.

(2) Section 205A—
insert—

‘attached, in relation to an information sheet and a contract,
means—

(a) if the documents are given other than by electronic communication—attached in a secure way so that the information sheet and the contract appear to be a single document; or

Examples of ways an information sheet may be attached to a contract—

- binding
- stapling

(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.

Example—

by including the documents in a single email’.

8 Amendment of s 205B (Relationship with Electronic Transactions (Queensland) Act

Section 205B—

insert—

‘Note—

For example, see the *Electronic Transactions (Queensland) Act 2001*, section 11 for a requirement about consent, and section 24 for rules about when an electronic communication is received.’.

9 Amendment of s 206 (Information to be given by seller to buyer)

(1) Section 206(5) and (6)—

omit, insert—

‘(5) If the lot the subject of the contract is not residential property, the seller must have an information sheet in the approved form attached to the contract when the contract is given to the buyer.

‘(6) A form may be approved under section 320 for an information sheet for a lot that is residential property.

Note—

See the *Property Agents and Motor Dealers Act 2000*, section 364, definition *information sheet*.’.

(2) Section 206(7), ‘cancel’—

omit, insert—

‘terminate’.

(3) Section 206(7)(b)—

omit, insert—

‘(b) the lot the subject of the contract is not residential property and the seller has not complied with subsection (5)’.

10 Replacement of s 206A (How the information sheet must be given for s 206(5))

Section 206A—

omit, insert—

‘206A Termination of contract for contravention of the Property Agents and Motor Dealers Act 2000, s 368A(2)(c)(ii)

‘(1) This section applies if the lot the subject of the contract is residential property and the seller or the seller’s agent fails to give the clear statement relating to an information sheet in the

[s 11]

approved form as required by the *Property Agents and Motor Dealers Act 2000*, section 368A(2)(c)(ii).

- ‘(2) Subject to subsections (3) and (4), the buyer may terminate the contract at any time before it settles by giving signed, dated notice of termination to the seller.
- ‘(3) The buyer may not terminate the contract if the buyer signed the information sheet attached to the contract form under the *Property Agents and Motor Dealers Act 2000*, section 368A(2)(b) before the buyer signed the contract form.
- ‘(4) The termination must happen not later than 90 days after the day the buyer receives a copy of the contract from the seller.
- ‘(5) The notice of termination must state that the contract is terminated under this section.
- ‘(6) If the contract is terminated, the seller must, within 14 days after the termination, repay to the buyer any amount paid to the seller towards the purchase of the lot.

Maximum penalty—200 penalty units.

- ‘(7) If the contract is terminated, the seller or the seller’s agent is liable to the buyer for the buyer’s reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract form.
- ‘(8) An amount payable to the buyer under this section is recoverable as a debt.
- ‘(9) In this section—

contract form means the contract form that is the proposed relevant contract mentioned in the *Property Agents and Motor Dealers Act 2000*, section 368A.’.

11 Amendment of s 209 (Cancelling contract for inaccuracy of disclosure statement)

- (1) Section 209, heading, ‘Cancelling’—
omit, insert—
‘Terminating’.

-
- (2) Section 209(1), ‘cancel’—
omit, insert—
‘terminate’.
 - (3) Section 209(1)(c), ‘cancellation’—
omit, insert—
‘termination’.
 - (4) Section 209(1)(c)(i), ‘cancelled’—
omit, insert—
‘terminated’.
 - (5) Section 209(1)(c)(ii), ‘cancelling’—
omit, insert—
‘terminating’.

12 Amendment of s 210 (Cancellation under this part)

- (1) Section 210, heading, ‘Cancellation’—
omit, insert—
‘Termination’.
- (2) Section 210, ‘cancels’—
omit, insert—
‘terminates’.
- (3) Section 210, after ‘of the contract’—
insert—
‘within 14 days after the termination’.

13 Amendment of s 212A (Buyer may cancel if there is no proposed community management statement)

- (1) Section 212A, heading, ‘cancel’—
omit, insert—

[s 14]

‘terminate’.

(2) Section 212A(3), ‘cancel’—

omit, insert—

‘terminate’.

14 Amendment of s 213 (Information to be given by seller to buyer)

(1) Section 213(5) and (5A)—

omit, insert—

‘(5) If the proposed lot the subject of the contract is not residential property, the seller must have an information sheet in the approved form attached to the contract when the contract is given to the buyer.

‘(5A) A form may be approved under section 320 for an information sheet for a proposed lot that is residential property.

Note—

See the Property Agents and Motor Dealers Act 2000, section 364, definition information sheet.’.

(2) Section 213(6), ‘cancel’—

omit, insert—

‘terminate’.

(3) Section 213(6)(b)—

omit, insert—

‘(b) the lot the subject of the contract is not residential property and the seller has not complied with subsection (5).’.

15 Replacement of s 213A (How the information sheet must be given for s 213(5))

Section 213A—

omit, insert—

**‘213A Termination of contract for contravention of the
Property Agents and Motor Dealers Act 2000,
s 368A(2)(c)(ii)**

- ‘(1) This section applies if the proposed lot the subject of the contract is residential property and the seller or the seller’s agent fails to give the clear statement relating to an information sheet in the approved form as required by the *Property Agents and Motor Dealers Act 2000*, section 368A(2)(c)(ii).
- ‘(2) Subject to subsections (3) and (4), the buyer may terminate the contract at any time before it settles by giving signed, dated notice of termination to the seller.
- ‘(3) The buyer may not terminate the contract if the buyer signed the information sheet attached to the contract form under the *Property Agents and Motor Dealers Act 2000*, section 368A(2)(b) before the buyer signed the contract form.
- ‘(4) The termination must happen not later than 90 days after the day the buyer receives a copy of the contract from the seller.
- ‘(5) The notice of termination must state that the contract is terminated under this section.
- ‘(6) If the contract is terminated, the seller must, within 14 days after the termination, repay to the buyer any amount paid to the seller towards the purchase of the proposed lot.
- Maximum penalty—200 penalty units.
- ‘(7) If the contract is terminated, the seller or the seller’s agent is liable to the buyer for the buyer’s reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract.
- ‘(8) An amount payable to the buyer under this section is recoverable as a debt.
- ‘(9) In this section—

contract form means the contract form that is the proposed relevant contract mentioned in the *Property Agents and Motor Dealers Act 2000*, section 368A.

[s 16]

proposed lot has the same meaning as the term has in section 213.’.

16 Amendment of s 214 (Variation of disclosure statement by further statement)

- (1) Section 214(4), ‘cancel’—
omit, insert—
‘terminate’.
- (2) Section 214(4)(c), ‘cancellation’—
omit, insert—
‘termination’.

17 Amendment of s 217 (Cancelling contract for inaccuracy of statement)

- (1) Section 217, heading, ‘Cancelling’—
omit, insert—
‘Terminating’.
- (2) Section 217, ‘cancel’—
omit, insert—
‘terminate’.
- (3) Section 217(d), ‘cancellation’—
omit, insert—
‘termination’.

18 Amendment of s 218 (Cancellation under this part)

- (1) Section 218, heading, ‘Cancellation’—
omit, insert—
‘Termination’.
- (2) Section 218, ‘cancels’—

omit, insert—

‘terminates’.

- (3) Section 218, after ‘of the contract’—

insert—

‘within 14 days after the termination’.

19 Amendment of s 221 (Part’s purpose)

Section 221(b), ‘cancel’—

omit, insert—

‘terminate’.

20 Amendment of s 222 (Effect of warranties and right to cancel)

Section 222, ‘cancel’—

omit, insert—

‘terminate’.

21 Amendment of s 224 (Cancellation for breach of warranty)

- (1) Section 224, heading, ‘Cancellation’—

omit, insert—

‘Termination’.

- (2) Section 224(1), ‘cancel’—

omit, insert—

‘terminate’.

- (3) Section 224(1), ‘cancelled’—

omit, insert—

‘terminated’.

- (4) Section 224(3), ‘cancels’—

[s 22]

omit, insert—

‘terminates’.

(5) Section 224(3), after ‘of the contract’—

insert—

‘within 14 days after the termination’.

22 Insertion of new ch 8, pt 8

Chapter 8—

insert—

‘Part 8 Transitional provisions for the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

‘368 Definitions for pt 8

‘In this part—

amended chapter 5 means chapter 5 as in force after the commencement.

commencement means the commencement of this section.

pre-amended provisions means sections 205A, 206, 206A, 213 and 213A as in force before the commencement.

pre-amendment contract means a pre-amendment non-residential contract or a pre-amendment residential contract.

pre-amendment non-residential contract means a contract to which the pre-amended provision, section 206(5) or 213(5), applied before the commencement.

pre-amendment residential contract means a contract to which the pre-amended provision, section 206(6) or 213(5A), applied before the commencement.

residential property see section 205A.

‘369 Matters relating to cancellation of pre-amendment contracts

- ‘(1) A pre-amendment contract can not be cancelled under the pre-amended provisions after the commencement.
- ‘(2) The cancellation, under the pre-amended provisions, of a pre-amendment contract having effect immediately before the commencement continues to have effect.

‘370 Termination relating to particular contracts for sale of lots that are not residential property

- ‘(1) This section applies if —
 - (a) a contract form for the sale of a lot that is not residential property was given to a proposed buyer by a seller before the commencement; and
 - (b) the contract form became or becomes a contract before, on or after the commencement.
- ‘(2) The contract may be terminated under amended section 206(7)(b) and for that purpose amended section 206(5) applies with the change mentioned in subsection (3).
- ‘(3) For applying amended section 206(5), all words from ‘must’ to ‘buyer’ are taken to be omitted and replaced by the words ‘must have had an information sheet in the approved form attached to the contract when the contract was given to the buyer’.
- ‘(4) For applying amended section 206(5) (the *provision*) as mentioned in subsection (3)—
 - (a) a reference in the provision to an information sheet in the approved form is a reference to an information sheet

[s 22]

in the approved form under the pre-amended provision, section 206(5); and

(b) the word ‘attached’ has the meaning it has in amended chapter 5.

‘(5) In this section—

amended section 206(5) means section 206(5) as in force after the commencement.

amended section 206(7)(b) means section 206(7)(b) as in force after the commencement.

‘371 Termination relating to particular contracts for sale of lots that are residential property

‘(1) This section applies if—

(a) a contract form for the sale of a lot that is residential property was given to a proposed buyer by a seller or a seller’s agent before the commencement; and

(b) the contract form became or becomes a contract before, on or after the commencement.

‘(2) The contract may be terminated under amended section 206A and, for that purpose, the section applies with all necessary and convenient changes and the changes mentioned in subsection (3).

‘(3) For applying amended section 206A in relation to the contract—

(a) in subsection (1) of the section all words from ‘fails’ to ‘section 368A(2)(c)(ii)’ are taken to be omitted and to be replaced by the words ‘failed to give the buyer a clear statement directing the buyer’s attention to an information sheet in the approved form when the seller or the seller’s agent gave the buyer the contract form for the contract’; and

(b) in subsection (3) of the section all words from ‘if’ to ‘signed the contract form’ are taken to be omitted and to be replaced by the words ‘if the information sheet was

-
- attached to the contract form and the buyer signed the information sheet before the buyer signed the contract form'; and
- (c) in subsection (4) of the section the word 'receives' is taken to be omitted and to be replaced by the words 'received or receives'; and
- (d) subsection (9) of the section is taken to be omitted.
- '(4) For amended section 206A(1) as applying under subsection (3)(a), it is declared that a person failed to give a clear statement directing attention to an information sheet in the approved form if, at the time the clear statement was given, the information sheet was not attached to the contract form.
- '(5) For applying amended section 206A as mentioned in subsection (3)(a) or (b)—
- (a) a reference in the section to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 206(6); and
- (b) the word 'attached' has the meaning it has in amended chapter 5.
- '(6) In this section—
- amended section 205A* means section 205A as in force after the commencement.
- amended section 206A* means section 206A as in force after the commencement.
- attached* see amended section 205A.

'372 Termination relating to particular contracts for sale of proposed lots that are not residential property

- '(1) This section applies if —
- (a) a contract form for the sale of a proposed lot that is not residential property was given to a proposed buyer by a seller before the commencement; and

[s 22]

- (b) the contract form became or becomes a contract before, on or after the commencement.
- ‘(2) The contract may be terminated under amended section 213(6)(b) and for that purpose amended section 213(5) applies with the change mentioned in subsection (3).
- ‘(3) For applying amended section 213(5), all words from ‘must’ to ‘buyer’ are taken to be omitted and replaced by the words ‘must have had an information sheet in the approved form attached to the contract when the contract was given to the buyer’.
- ‘(4) For applying amended section 213(5) (the *provision*) as mentioned in subsection (3)—
 - (a) a reference in the provision to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 213(5); and
 - (b) the word ‘attached’ has the meaning it has in amended chapter 5.
- ‘(5) In this section—
 - amended section 213* means section 213 as in force after the commencement.
 - amended section 213(5)* means section 213(5) as in force after the commencement.
 - amended section 213(6)(b)* means section 213(6)(b) as in force after the commencement.
 - proposed lot* has the same meaning as the term has in amended section 213.

‘373 Termination relating to particular contracts for sale of proposed lots that are residential property

- ‘(1) This section applies if—
 - (a) a contract form for the sale of a proposed lot that is residential property was given to a proposed buyer by a seller or a seller’s agent before the commencement; and

-
- (b) the contract form became or becomes a contract before, on or after the commencement.
- ‘(2) The contract may be terminated under amended section 213A and, for that purpose, the section applies with all necessary and convenient changes and the changes mentioned in subsection (3).
- ‘(3) For applying amended section 213A in relation to the contract—
- (a) in subsection (1) of the section all words from ‘fails’ to ‘section 368A(2)(c)(ii)’ are taken to be omitted and to be replaced by the words ‘failed to give the buyer a clear statement directing the buyer’s attention to an information sheet in the approved form when the seller or the seller’s agent gave the buyer the contract form for the contract’; and
- (b) in subsection (3) of the section all words from ‘if’ to ‘signed the contract form’ are taken to be omitted and to be replaced by the words ‘if the information sheet was attached to the contract form and the buyer signed the information sheet before the buyer signed the contract form’; and
- (c) in subsection (4) of the section the word ‘receives’ is taken to be omitted and to be replaced by the words ‘received or receives’; and
- (d) in subsection (9), the definition *contract form* is taken to be omitted.
- ‘(4) For amended section 213A(1) as applying under subsection (3)(a), it is declared that a person failed to give a clear statement directing attention to an information sheet in the approved form if, at the time the clear statement was given, the information sheet was not attached to the contract form.
- ‘(5) For applying amended section 213A as mentioned in subsection (3)(a) or (b)—
- (a) a reference in the section to an information sheet in the approved form is a reference to an information sheet in

[s 23]

the approved form under the pre-amended provision, section 213(5A); and

(b) the word ‘attached’ has the meaning it has in amended chapter 5.

‘(6) In this section—

amended section 205A means section 205A as in force after the commencement.

amended section 213 means section 213 as in force after the commencement.

amended section 213A means section 213A as in force after the commencement.

attached see amended section 205A.

proposed lot has the same meaning as the term has in amended section 213.’.

23 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definitions *commencement*, *residential property* and *warning statement*—

omit.

(2) Schedule 6—

insert—

‘*amended chapter 5*, for chapter 8, part 8, see section 368.

commencement—

(a) for chapter 8, part 1, see section 326; or

(b) for chapter 8, part 8, see section 368.

pre-amended provisions, for chapter 8, part 8, see section 368.

pre-amendment contract, for chapter 8, part 8, see section 368.

pre-amendment non-residential contract, for chapter 8, part 8, see section 368.

pre-amendment residential contract, for chapter 8, part 8, see section 368.

residential property—

- (a) for chapter 5, see section 205A; or
- (b) for chapter 8, part 8, see section 368.’.

Part 4 Other amendments

24 Legislation amended in schedule

- (1) The schedule amends the legislation it mentions.
- (2) However, subsection (1) does not apply in relation to particular legislation if another provision of this Act states that the schedule amends the particular legislation.

Schedule Other amendments

sections 3 and 24

Property Agents and Motor Dealers Act 2000

1 Section 22(2)(d), after ‘an applicant’—

insert—

‘for a commercial agent’s licence’.

2 After section 23—

insert—

‘23A Special provision for applicant for resident letting agent’s licence

‘(1) This section applies to an applicant for a resident letting agent’s licence for a building complex.

‘(2) Before the chief executive may issue the licence, the applicant must satisfy the chief executive that the applicant has prescribed approval.

Note—

See section 49(2)(d).

‘(3) In this section—

prescribed approval means—

(a) if the applicant is an individual—body corporate approval for the individual or the person by whom the individual is to be employed to carry on a business of letting lots in the building complex under the authority of a licence; or

(b) if the applicant is a corporation—body corporate approval for the corporation to carry on a business of letting lots in the building complex under the authority of a licence.’.

- 3 Section 28(1)(g)(iii) and (iv), after ‘;’—**
insert—
‘and’.
- 4 Section 35(1)(c)(i)—**
omit.
- 5 Section 35(1)(c)(ii) and (iii)—**
renumber as section 35(1)(c)(i) and (ii).
- 6 Section 35(3)(a)—**
omit.
- 7 Section 35(3)(b) and (c)—**
renumber as section 35(3)(a) and (b).
- 8 Section 35(4), ‘subsection(1)(c)(ii)’—**
omit, insert—
‘subsection (1)(c)(i)’.
- 9 Section 37(a)(ii), ‘an order’—**
omit, insert—
‘a determination’.
- 10 Section 44(1)—**
omit, insert—
‘(1) An individual is eligible to obtain a motor dealer’s licence only if the individual—
(a) is at least 18 years; and

- (b) has the educational or other qualifications for a motor dealer's licence that may be prescribed under a regulation.'.

11 Section 44(3)—

omit, insert—

- '(3) A corporation is eligible to obtain a motor dealer's licence only if the corporation satisfies the chief executive that a director of the corporation is a motor dealer.'

12 Section 49(2)—

insert—

- '(d) if the application is for a resident letting agent's licence for a building complex—the applicant has the prescribed approval under section 23A.'

13 Section 49(6), note, 'this'—

omit.

14 Section 64(6), definition *representative*, paragraph (a), after ';'—

insert—

'or'.

15 Section 84(1)(e)—

omit.

16 Section 84(1)(f) and (g)—

renumber as section 84(1)(e) and (f).

- 17 Section 93(2), from ‘perform—’**
omit, insert—
‘perform because of a condition to which the certificate is subject.’.
- 18 Section 94(2)(c)—**
omit.
- 19 Section 94(2)(d)—**
renumber as section 94(2)(c).
- 20 Section 97(2)(d)—**
omit.
- 21 Section 97(2)(e)—**
renumber as section 97(2)(d).
- 22 Section 106(2), example, ‘Example’—**
omit, insert—
‘Examples’.
- 23 Section 109(3)(a)(ii)—**
omit.
- 24 Section 109(3)(a)(iii) to (v)—**
renumber as section 109(3)(a)(ii) to (iv).
- 25 Section 109(3)(b)(ii)—**
omit.

- 26 Section 109(3)(b)(iii) to (vii)—**
renumber as section 109(3)(b)(ii) to (vi).
- 27 Section 129(1) and (2), ‘, acts only within the scope of the person’s employment authority under section 130’—**
omit.
- 28 Section 130—**
omit.
- 29 Section 159(2), note—**
omit.
- 30 Section 160(4)(b), ‘for a residential service’—**
omit, insert—
‘of rooming accommodation’.
- 31 Section 160(4)(b), ‘the conduct of the service’—**
omit, insert—
‘providing rooming accommodation’.
- 32 Section 167(1)(a), after ‘;’—**
insert—
‘and’.
- 33 Section 169(1) and (2), ‘, acts only within the scope of the salesperson’s employment authority under section 170’—**
omit.

- 34 Section 170—**
omit.
- 35 Section 196(2), note—**
omit.
- 36 Section 206(1), ‘, acts only within the scope of the trainee’s employment authority under section 207’—**
omit.
- 37 Section 207—**
omit.
- 38 Section 226(3)(d)(ii), ‘and’—**
omit.
- 39 Section 229(2)(a)(ii), ‘in the auctioneer’s opinion,’—**
omit, insert—
‘considers’.
- 40 Section 229(3)(b), ‘in the referee’s opinion,’—**
omit, insert—
‘considers’.
- 41 Section 229(4), ‘who, in the auctioneer’s opinion,’—**
omit, insert—
‘and considers’.
- 42 Section 253(2), note—**
omit.

43 Section 264(1), ‘, acts only within the scope of the salesperson’s employment authority under section 265’—

omit.

44 Section 265—

omit.

45 Section 274(2), note—

omit.

46 Section 280(1) and (2), ‘, acts only within the scope of the salesperson’s employment authority under section 281’—

omit.

47 Section 281—

omit.

48 Section 327(1)—

omit, insert—

‘(1) A motor dealer who is a principal licensee must, if the motor dealer changes the place where the motor dealer carries on the motor dealer’s principal place of business, notify the chief executive in the approved form of the change within 14 days after the change.

Maximum penalty—200 penalty units.’.

49 Section 327(3)—

omit, insert—

‘(3) A motor dealer who is a principal licensee must notify the chief executive in the approved form of the opening of any

place where the dealer carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.’.

50 Section 329(2), note—

omit.

51 Section 340(1) and (2), ‘, acts only within the scope of the subagent’s employment authority under section 341’—

omit.

52 Section 341—

omit.

53 Section 353(2), note—

omit.

54 Section 375—

omit, insert—

‘375 Trust account may only be opened at approved financial institution

‘(1) A licensee must not open a general trust account or special trust account at a place other than the office or branch of an approved financial institution within the State.

Maximum penalty—200 penalty units.

Note—

A special trust account is a trust account created under section 380 in which an amount is held for investment at the direction of both parties to the sale.

- ‘(2) Before opening the account, the licensee must give the manager or other officer in charge of the institution’s office or branch a copy of the licensee’s licence.

Maximum penalty for subsection (2)—200 penalty units.’

55 Section 377—

omit, insert—

‘377 Notice of account’s opening, name change or closing

- ‘(1) This section applies if a licensee does any of the following (each an *event*)—

- (a) opens a general trust account or special trust account;
- (b) changes the name of a general trust account or special trust account;
- (c) closes a general trust account or special trust account.

- ‘(2) The licensee must, under subsection (3), give the chief executive written notice of the happening of the event within 14 days of its happening.

Maximum penalty—200 penalty units.

- ‘(3) The written notice must state—

- (a) whether the account is a general trust account or special trust account; and
- (b) the name of the financial institution where the account is or was kept; and
- (c) the account name; and
- (d) the identifying number of the financial institution; and

Editor’s note—

This is commonly referred to as the bank state branch number.

- (e) the account number.’

56 Section 496(1)(h)(ii)—

omit, insert—

‘(ii) the employee has, in performing an activity of a licensee, been incompetent or acted in an unprofessional way.’.

57 Section 578(2), ‘sections’—

omit, insert—

‘section’.

58 Section 608(2)(b), ‘to be’—

omit.

59 Schedule 2, definitions *commencement*, *disclosure statement* and *employment authority*—

omit.

60 Schedule 2—

insert—

‘amended chapter 11, for chapter 19, part 8, see section 644.

benefit, for chapter 11, see section 364.

commencement—

(a) for chapter 19, part 1, see section 603; or

(b) for chapter 19, part 8, see section 644.

formed on a sale by auction, for chapter 11, see section 364.

pre-amended chapter 11, for chapter 19, part 8, see section 644.

pre-amendment relevant contract, for chapter 19, part 8, see section 644.’.

Schedule

- 61** **Schedule 2, definition *comparable certificate*, paragraphs (a) to (c), after ‘;’—**
 insert—
 ‘or’.
- 62** **Schedule 2, definition *employment register*, paragraphs (a) to (f), after ‘;’—**
 insert—
 ‘or’.
- 63** **Schedule 2, definition *registered office*, paragraphs (a) to (f), after ‘;’—**
 insert—
 ‘or’.

Property Agents and Motor Dealers Regulation 2001

- 1** **Section 12(d) and (e)—**
 omit.
- 2** **Section 12(f)—**
 renumber as section 12(d).
- 3** **Section 15(1)(f) to (h)—**
 omit.