

# CONVEYANCING UPDATE

A Division of McKays Solicitors

## For a smooth, hassle free conveyancing solution...

### Rental property managers beware...new laws could cost you dearly!

**Real estate agents and property managers are being caught out because they don't realise that the new Building and Construction Industry Payments Act (2004) applies to them.**

If you are a real estate agent or a property manager and a client asks you to arrange renovations or repairs to their property, you have to be extremely careful. If you don't understand the Act you could end up having to pay the person who carried out the work in full, even if the work is defective or the bill is unreasonable.

#### The main danger for you

Under the Act, if someone is carrying out work for you, they have the right to give you a document called a Payment Claim.

Once you receive a Payment Claim you only have ten business days within which to respond, either by paying the full amount claimed, or giving them a document called a Payment Schedule. The Payment Schedule has to, amongst other things, set out the reasons why you say you are not obliged to pay the full amount claimed.

If you don't pay the Payment Claim in full, or deliver a Payment Schedule setting out the reason you object to paying, the person who gave you the Payment Claim can sue you personally for the full amount set out in the Payment Claim and you will not be able to raise **any defence at all!** You will end up with a judgment against you personally even if the work is defective or there is some other good reason why you should not have to pay the bill.

Alternatively, they can, make you go through an Adjudication process and ultimately you will again end up with an enforceable order and quite likely a court,

judgment against you personally.

In addition, if the work is ongoing, they can down tools until you pay whether or not they take you to court or Adjudication. It is no excuse or defence to prove that you told the person who did the work what was wrong with the work or the bill even if they agreed and promised to rectify the problem.

How difficult do you think it is going to be to get the property owner to re-imburse you for the full amount you have had to pay because you did not comply with the Act?

#### The bottom line...

The bottom line is that everyone in your office needs to know how to recognise a Payment Claim and understand the adverse consequences if you do not pay in full or respond with a Payment Schedule. A Payment Schedule delivered within the strict ten business days time limit is the only way you can protect yourself against being ordered to pay money in circumstances where you should not have to.

Every bill for work done on a rental property, if it is in the form of a Payment Claim, must be either paid or responded to with a Payment Schedule within ten business days of having received it.

**If you would like to know more about how your real estate agency can ensure it is equipped for these new rules, or you want to know how you could benefit from the Act, please call Roland Taylor in our Mackay office on 4963 0828 or Ian Heathwood or Michael Cope in our Brisbane office on 3223 5900.**

November 2005