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Matthew Yates joined MacGillivrays in January to manage 'House of Bricks', our affiliated conveyancing house and to manage the Maroochydore office.

He brings a wealth of property and commercial experience to the role and sees his main goals as expanding our current conveyancing services and developing the property law services offered from the Maroochydore office.

Before joining MacGillivrays, Matthew worked in Townsville and Brisbane but is excited about his move to the Sunshine Coast where he is currently settling in with his wife and young son.

Matthew can help you with any property-related issues you might have and has a particular interest in large rural land and stock transfers which was the focus of some of his work in Townsville.

PAMDA CHANGES TO AFFECT PRICE ESTIMATES GIVEN BY AGENTS

In March Queensland saw another round of amendments to the Property Agents & Motor Dealers Act 2000. Some of the amendments commenced on 15 March 2006 with the remainder to commence on a date still to be proclaimed.

In this article we deal with some of the more significant amendments which will soon (once the relevant provisions commence) constrain the way that agents interact with sellers and buyers when giving price estimates.

Currently, it is common practice for agents to go to a home, view the home, and, based on their knowledge of the market in that area, to provide the owner with a price estimate. They may even possibly have a discussion on a likely price range over the telephone.

It will no longer be lawful for estimates to be provided by agents in these ways. Once the relevant provisions have commenced, it will be necessary for the agent to provide one of the following written documents at the time that they provide any estimate to the seller:

- comparative market analysis for the property ("CMA"); or
- *if a CMA cannot be prepared for the property*, a written explanation showing how the agent decided the market value of the property.

According to the amending legislation, a CMA is a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5 km of that property.

WHAT IS REQUIRED FOR A VALID CMA?

- 1) **3 properties** must be located such that they:
 - are of '**similar standard or condition**' to the offered property;
 - are **within 5 kilometres** of the subject property; and
 - were **sold within the previous 6 months**.
- 2) The 3 properties must be **compared** to the subject property.

It is helpful for us to explore the relevant concepts in more detail.

WHAT DOES 'SIMILAR STANDARD OR CONDITION' REALLY MEAN?

On your first quick reading of this phrase it may appear straight-forward. However, on a deeper analysis it's possible to see that this phrase could cause confusion during the preparation of a CMA.

A proper reading of the phrase suggests that there are, in fact, two concepts involved:

- 1) Is the property of a 'similar standard'?
- 2) Is the property of a 'similar condition'?

The use of the word 'or' in the phrase and the fact that 'standard' and 'condition' are not synonymous terms support this interpretation.

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2006 PAMDA AMENDMENTS BRIEF SUMMARY OF THE MAJOR CHANGES

Here's a brief summary of some of the major changes affecting real estate agencies:

- substantiation of price estimates will soon be required (refer main article);
- production of licences by salespeople required if requested by a person with whom they are dealing;
- strengthening of provisions relating to the overclaiming of commissions and expenses;
- inclusion of provisions assisting consumers in the recovery of commissions & expenses which have been wrongly claimed;
- facilitation of the assignment of agency appointments;
- real estate agent now able to be in charge of more than one place of business provided the businesses have a common boundary not separated by a road;
- administrative staff can perform a broader range of administrative functions;
- strengthening of some of the provisions relating to trust accounts;
- facilitation of the role of liquidators, controllers and receivers appointed to real estate agencies.

No doubt agencies have heard a bit about these amendments. We understand that some of them are confusing and may require significant changes to methods of operation. Contact us if we can assist you in preparing for the changes.

PLEASE NOTE: This newsletter is not legal advice and our comments are of a general nature only. This document is not to be relied on as substitution for proper detailed advice. If you would like to be removed from, or added to our mailing or emailing list, contact Donna Ryan on (07) 3228 5278 or donnar@macgillivrays.com.au

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Here's an extreme example to illustrate our point. It could not be said that a 4 bedroom timber home with a galvanised iron roof, with no ensuite and no garage is the same standard as a 4 bedroom brick and tile home with an ensuite and a double lock up garage. Yet, assuming they were both immaculately maintained, one might argue that the two homes are in similar condition.

Why someone would want to compare two homes that were nothing alike in size and structure but were in similar condition is a question that we cannot easily answer. Given the significant \$40,500 maximum penalty for a failure to provide a (valid) CMA we consider that further clarification by government is required.

In the meantime, out of caution we will be recommending that agents seek to use homes of similar standard *and* similar condition in their comparisons.

WHAT DOES 'WITHIN 5 KMS' MEAN?

Determining whether a property is in fact within 5 kms of another property can create its own difficulties. It should be remembered that the 5 kms will be measured 'as the crow flies', not by street distance.

A procedure will need to be developed by agents to streamline the process of determining distances within the suburbs that are the focus or their sales. If they currently have scaled wall maps the process should not be too difficult but will need to be done 3 times during the preparation of each CMA (unless of course the relevant property is so obviously within the 5 km radius that they needn't check it).

WHAT DOES 'SOLD WITHIN THE PREVIOUS 6 MONTHS' MEAN?

It is important to note that the relevant date from which to calculate the 6 months will be the date the agent actually provides the CMA to the seller (irrespective of the date they actually prepared it) so it is prudent, where possible, that agents not use properties that were sold close to the 6 month limit. If they do use such a property they will need to remember to provide the CMA to the seller immediately.

It also needs to be borne in mind that if the agent provides the CMA by post the relevant date from which the 6 months is calculated will be the date the seller actually receives it in the mail.

If the agent locates another property that is useful for a comparison but doesn't meet these criteria (ie it was sold 7 months ago) it can easily be included in the CMA but it cannot be counted as one of the 3 properties.

YOUR CMA MUST BE 'COMPARING' THE OFFERED PROPERTY WITH THE 3 PROPERTIES LOCATED

The legislation is quite clear in requiring agents to actually compare the offered property with the 3 properties located.

This means it is not enough for the agent to simply list details of the 3 properties and then conclude a price leaving the seller to make their own comparisons based on the factual information given to them.

WHAT DOES IT MEAN TO SAY THAT A 'CMA CANNOT BE PREPARED FOR THE PROPERTY'?

Some assistance as to the intention of this phrase can be gleaned from the explanatory notes to the bill introduced to parliament. These notes indicate that the intention of this phrase is to mean that it cannot be prepared because of a lack of sales activity in the relevant area.

GIVING PRICE INFORMATION TO BUYERS

A new provision has also been included restricting the information that can be provided to a buyer about the price at which a seller is willing to part with their property.

Under the changes it will be unlawful for an agent to disclose any of the following information to a buyer *if a property is going to auction*:

- whether a reserve price has been set;
- the amount of any reserve price;
- an amount the agent considers is a price likely to result in a successful or acceptable bid.

This provision virtually prevents an agent from giving any useful information about price to a buyer before an auction and provides a maximum penalty of \$40,500 for a breach.

If the property *is not going to auction* and the seller tells the agent not to disclose the price at which the seller is willing to sell the property, it will also be unlawful for the agent to disclose that information. Again, a maximum penalty of \$40,500 applies.

With the seller's consent, the agent can provide to the seller the CMA that was prepared for the property, or, if one could not be prepared, the written explanation showing how the agent decided the market value of the property.

