

# TASMANIA

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## **PROPERTY AGENTS AND LAND TRANSACTIONS AMENDMENT BILL 2009**

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# **PROPERTY AGENTS AND LAND TRANSACTIONS AMENDMENT BILL 2009**

*(Brought in by the Minister for Corrections and Consumer  
Protection, the Honourable Lisa Maria Singh)*

## **A BILL FOR**

**An Act to amend the *Property Agents and Land  
Transactions Act 2005***

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Property Agents  
and Land Transactions Amendment Act (No. 2)  
2009*.

### **2. Commencement**

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) The provisions of Part 3 commence on a day or days to be proclaimed.

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**PART 2 – PROPERTY AGENTS AND LAND  
TRANSACTIONS ACT 2005 AMENDED**

**3. Principal Act**

In this Part, the *Property Agents and Land Transactions Act 2005*\* is referred to as the Principal Act.

**4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by inserting after the definition of “name” the following definition:

**“notice of intention”** means a notice referred to in section 9(2)(b) or (3)(b) or 10(1)(b) or (2)(b);

**5. Section 9 amended (Employment of property managers and assistant property managers)**

Section 9 of the Principal Act is amended as follows:

(a) by omitting subsections (2) and (3) and substituting the following subsections:

(2) A property manager named in Part 2(1) of the Register must not

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employ an individual to carry out the functions of an assistant property manager on behalf of the property manager unless the individual –

- (a) is an assistant property manager; and
- (b) has caused to be published in a newspaper published in the State and circulating generally in the State a notice, in a form approved by the Board, stating that the person intends to be employed as an assistant property manager by the property manager specified in the notice.

Penalty: Fine not exceeding 500 penalty units.

- (3) A property manager named in Part 2(1) of the Register must not enter into a contract with a body corporate for the carrying out, by an individual who is an employee or contractor of the body corporate, of the functions of an assistant property manager unless the individual –

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(a) is an assistant property manager; and

(b) has caused to be published in a newspaper published in the State and circulating generally in the State a notice, in a form approved by the Board, stating that the individual intends to be, or continue to be, employed or otherwise contracted as an assistant property manager by the body corporate specified in the notice.

Penalty: Fine not exceeding 500 penalty units.

(3A) For the purposes of subsections (2) and (3), a notice is not required to be published under subsection (2)(b) or (3)(b) if a notice under either of those subsections has previously been published by the relevant person.

(3B) A notice of intention published under subsection (2)(b) or (3)(b) by a person (the “intending employee”) is to contain a statement that another person may object, within 14 days after

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the publication of the notice of intention, to the employment as an assistant property manager of the intending employee by giving written notice of objection to –

- (a) the Board; and
  - (b) the intending employee; and
  - (c) the property manager or body corporate specified in the notice of intention.
- (b) by omitting from subsection (5) “or an assistant property manager employed by a property manager named in Part 2(1) of the Register unless the person is a property manager or an assistant property manager employed by the property manager.” and substituting “unless the person is a property manager.”;
- (c) by inserting the following subsection after subsection (5):
  - (6) A person must not, by any means, hold himself or herself out as being an assistant property manager employed or contracted by a property manager named in Part 2(1) of the Register, or by a body corporate, unless the person is so employed or contracted.

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Penalty: Fine not exceeding 500  
penalty units.

**6. Section 10 amended (Employment of property consultants by real estate agents)**

Section 10 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) A real estate agent named in Part 1(1) of the Register must not employ an individual to carry out the functions of a property consultant on behalf of the agent unless the individual –

(a) is a property consultant;  
and

(b) has caused to be published in a newspaper published in the State and circulating generally in the State a notice, in a form approved by the Board, stating that the individual intends to be employed as a property consultant by the real estate agent specified in the notice.



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Penalty: Fine not exceeding 500  
penalty units.

(2) A real estate agent named in Part 1(1) of the Register must not enter into a contract with a body corporate for the carrying out, by an individual who is an employee or contractor of the body corporate, of the functions of a property consultant unless the individual –

(a) is a property consultant;  
and

(b) has caused to be published in a newspaper published in the State and circulating generally in the State a notice, in a form approved by the Board, stating that the individual intends to be, or continue to be, employed or otherwise contracted as a property consultant by the body corporate specified in the notice.

Penalty: Fine not exceeding 500  
penalty units.

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(2A) For the purposes of subsections (1) and (2), a notice is not required to be published under subsection (1)(b) or (2)(b) if a notice under either of those subsections has previously been published by the relevant individual.

(2B) A notice of intention published under subsection (1)(b) or (2)(b) by a person (the “intending employee”) is to contain a statement that another person may object, within 14 days after the publication of the notice of intention, to the employment or contracting of the intending employee as a property consultant by giving written notice of objection to –

(a) the Board; and

(b) the intending employee;  
and

(c) the real estate agent or body corporate specified in the notice of intention.

(2C) The written notice of objection is to contain the name and address of the objector and the grounds of objection.

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- (b) by inserting in subsection (3)(b) “or body corporate” after “agent”;
- (c) by omitting from subsection (3)(b) “employed.” and substituting “employed or contracted.”;
- (d) by inserting in subsection (4) “or contracted” after “being a property consultant employed”;
- (e) by inserting in subsection (4) “or body corporate” after “estate agent”;
- (f) by inserting in subsection (4) “or contracted” after “is a property consultant employed”;
- (g) by omitting from subsection (4) “agent.” and substituting “agent or body corporate.”.

**7. Section 18 amended (Appointment of real estate agents to be in writing)**

Section 18 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (7) and substituting the following paragraph:
  - (b) is not expressed to be for a fixed period or is expressed to be for a period of more than 30 days –

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- (b) by inserting in subsection (7) “at least” after “other”;
- (c) by inserting in subsection (8) “relevant” after “of the”.

**8. Section 19 amended (Appointment of property managers to be in writing)**

Section 19 of the Principal Act is amended by omitting subsection (7) and substituting the following subsection:

- (7) A written appointment mentioned in subsection (1) that is not expressed to be for a fixed period, or is expressed to be for a period of more than 30 days, may be terminated by either party giving to the other at least 30 days’ written notice of termination.

**9. Section 33 amended (General auctioneering business to be carried on by general auctioneer or real estate agent)**

Section 33(2) of the Principal Act is amended by inserting “or otherwise contracted” after “employed”.

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**10. Section 59 amended (Part 3 of Register)**

Section 59 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Part 3 of the Register is to be divided into –
  - (a) Division (1), which is to contain the name and address of each person who is carrying on general auctioneering business and show, in addition, the address of each place where that person is carrying on that business and the name under which that person is doing so; and
  - (b) Division (2), which is to contain the names and addresses of all other such persons and any other information approved by the Board.

**11. Section 81 amended (Duty of Board)**

Section 81(1) of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting the following paragraphs:

- (a) to maintain the Register in accordance with this Act; and

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- (b) to administer the approval of qualifications for property agents; and

**12. Section 182 amended (Interpretation of Part 10)**

Section 182 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “authorised officer”:

**“advertised for sale off-the-plan”**  
means advertised for sale as residential land for which a new folio of the register of title is proposed to be created before the completion of the sale;

- (b) by omitting the definition of “purchaser” and substituting the following definitions:

**“person”** includes –

- (a) an Agency within the meaning of the *State Service Act 2000*; and
- (b) a statutory authority; and
- (c) any other body of persons, whether incorporated or not and

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whether an emanation of  
the Crown or otherwise;

**“purchaser”** means a person who  
purchases or proposes to purchase  
land;

**“register of title”** means the register  
of title referred to in section 33 of  
the *Land Titles Act 1980*;

- (c) by inserting the following definition after  
the definition of “residential agency  
agreement”:

**“residential land”** means –

- (a) a hobby farm that is less  
than 50 hectares in area;  
or

- (b) land intended primarily  
for occupation as a place  
of residence –

whether or not intended only for  
rental;

- (d) by inserting “a hobby farm that is less  
than 50 hectares in area, or” after  
“means” in the definition of “residential  
property”;

- (e) by omitting “residence” from the  
definition of “residential property” and  
substituting “residence,”;

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- (f) by omitting the definition of “vendor” and substituting the following definition:

**“vendor”** means a person who sells land or advertises land for sale.

**13. Section 183 substituted**

Section 183 of the Principal Act is repealed and the following section is substituted:

**183. Application of Part**

- (1) This Part does not affect the operation of the *Conveyancing and Law of Property Act 1884*.
- (2) For the avoidance of doubt, this Part does not apply to a disposition of property by way of –
- (a) a residential tenancy agreement within the meaning of the *Residential Tenancy Act 1997* to which that Act applies; or
  - (b) a grant of a lease, licence or easement.

**14. Part 10, Division 2: Heading amended**

Division 2 of Part 10 of the Principal Act is amended by inserting in the heading to that Division “*residential*” after “*vendors of*”.



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**15. Section 185 amended (Application of Division)**

Section 185 of the Principal Act is amended as follows:

- (a) by inserting “residential” after “sales of”;
- (b) by inserting in paragraph (a) “residential” after “the”;
- (c) by omitting from paragraph (a) “offered” and substituting “advertised”;
- (d) by inserting in paragraph (b) “residential” after “the”.

**16. Section 186 amended (Vendors to provide relevant disclosure documents)**

Section 186 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “offering” and substituting “advertising residential”;
- (b) by inserting in subsection (2) “disclosure” after “relevant”;
- (c) by omitting subsection (3).

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**17. Section 187 amended (Location of disclosure documents to be contained in advertisements)**

Section 187 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “relevant” after “which the”;
- (b) by inserting in subsection (2) “relevant” after “and the”.

**18. Section 188 amended (Vendors to provide relevant disclosure documents before public auction)**

Section 188 of the Principal Act is amended by omitting “purchaser,” and substituting “purchaser by displaying them prominently,”.

**19. Section 189 amended (Contract voidable if relevant disclosure documents not provided)**

Section 189 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
  - (1) A purchaser under a contract for the sale of residential land may at any time before settlement rescind the contract without

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penalty if the relevant disclosure documents were not –

- (a) available to the purchaser in accordance with section 186(1); or
  - (b) given to the purchaser as required under section 186(2); or
  - (c) made available to the purchaser as required under section 188.
- (b) by omitting from subsection (4)(a) “solicitor;” and substituting “solicitor or conveyancer;”;
- (c) by omitting from subsection (4)(b) “solicitor” and substituting “solicitor or conveyancer”;
- (d) by omitting from subsection (5)(a) “solicitor;” and substituting “solicitor or conveyancer;”;
- (e) by omitting from subsection (5)(b) “solicitors.” and substituting “solicitors or conveyancers.”.

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**20. Section 190 amended (Relevant disclosure documents)**

Section 190 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) and substituting the following paragraphs:
  - (b) in the case of residential land that is subject to the *Land Titles Act 1980* and is not being advertised for sale off-the-plan, a copy of the relevant folio of the register of title; and
  - (c) in the case of residential land that is subject to the *Land Titles Act 1980* and is not being advertised for sale off-the-plan, a copy of the plan, if any, to which the relevant folio of the register of title refers; and
- (b) by inserting in paragraph (d) “residential” after “where the”;
- (c) by inserting in paragraph (d)(i) “residential” after “statement that the”;
- (d) by inserting in paragraph (d)(i) “residential” after “of the”;
- (e) by inserting in paragraph (d)(iv) “residential” after “the”;

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- (f) by omitting from paragraph (d)(v) “Act;” and substituting “Act or, if the vendor has been unable to obtain such a certificate despite making reasonable efforts, a statement specifying the reasons for the failure to obtain the certificate;”.

**21. Section 191 amended (Vendor statements)**

Section 191 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
  - (a) is to contain the prescribed information and –
    - (i) if a form is prescribed, be in the prescribed form; or
    - (ii) if no form is prescribed, be in a form approved by the Director; and
- (b) by omitting from subsection (2) “agent.” and substituting “agent or employee of a property agent.”.

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**22. Section 192 amended (Warning notices)**

Section 192(1) of the Principal Act is amended by inserting “residential” after “sale of”.

**23. Section 193 repealed**

Section 193 of the Principal Act is repealed.

**24. Section 196 amended (Liability of agent)**

Section 196 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “residential” after “purchase the”;
- (b) by inserting in subsection (2) “residential” after “purchase the”.

**25. Section 197 amended (Certain conditions to be implied in contract)**

Section 197 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “residential” after “sale of”;
- (b) by omitting paragraph (a) from subsection (1);

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- (c) by inserting in subsection (2) “residential” after “relevant”;
- (d) by inserting in subsection (5) “residential” after “relevant”.

**26. Section 203 amended (Right to rescind contract for sale of residential property – cooling-off rights)**

Section 203 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “solicitor;” and substituting “solicitor or conveyancer;”;
- (b) by omitting from subsection (2)(b) “solicitor” and substituting “solicitor or conveyancer”;
- (c) by omitting from subsection (3)(a) “solicitor;” and substituting “solicitor or conveyancer;”;
- (d) by omitting from subsection (3)(b) “solicitors.” and substituting “solicitors or conveyancers.”.

**27. Section 206 amended (Contracts, &c., to avoid requirements of this Part void)**

Section 206 of the Principal Act is amended by inserting “residential” after “sale of”.

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s. 28      Part 3 – Property Agents and Land Transactions Act 2005 Further Amended

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TRANSACTIONS ACT 2005 FURTHER AMENDED**

**28. Principal Act**

In this Part, the *Property Agents and Land Transactions Act 2005*\* is referred to as the Principal Act.

**29. Section 64 amended (Qualifications for registration as real estate agent)**

Section 64 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The name of a person, not being a company, may be entered in Part 1 of the Register if the person has the prescribed qualifications.

**30. Section 65 amended (Qualifications for registration as property manager)**

Section 65(1) of the Principal Act is amended by omitting “satisfies the Board, by examination or inquiry, that the person has sufficient knowledge and experience of property management business to be able to carry on that business.”

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and substituting “has the prescribed qualifications.”.

**31. Section 66 amended (Qualifications for registration as general auctioneer)**

Section 66(1) of the Principal Act is amended by omitting “satisfies the Board, by examination or inquiry, that the person has sufficient knowledge and experience of general auctioneering business to be able to carry on that business.” and substituting “has the prescribed qualifications.”.