

Property Law Regulation 2024

Explanatory notes for SL 2024 No. 211

Made under the

Property Law Act 2023

General Outline

Short Title

Property Law Regulation 2024

Authorising law

Section 235 of the *Property Law Act 2023*

Policy objectives and the reasons for them

The *Property Law Act 2023* (the Act) replaces the *Property Law Act 1974* with new property legislation to simplify, streamline and modernise Queensland's property laws. The Act also implements a statutory seller disclosure scheme for sales of freehold land in Queensland.

The policy objectives of the *Property Law Regulation 2024* (the Regulation) are to:

- prescribe subordinate legislation that can render voidable or unenforceable a contract or disposition of property (section 71 of the Act);
- prescribe various matters to support the operation of the seller disclosure scheme, including the information and certificates which must be disclosed by the seller of a lot before a contract for the sale of the lot is signed by the buyer (section 99 of the Act);
- prescribe matters that are not a 'material matter' for the purposes of having a termination right under the seller disclosure scheme (section 104 of the Act); and
- prescribe the types of mortgages that impose additional duties on a mortgagee when selling a property (section 116 of the Act).

In its 2017 *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Report), the Commercial and Property Law Research Centre at the Queensland University of Technology recommended bringing together common law, statutory and contractual seller disclosure obligations into a statutory seller disclosure scheme for freehold land underpinned by four guiding principles:

- information to be provided by the seller to the buyer pre-contract should be within the seller's knowledge or readily available by search at reasonable cost to the seller;

- information should be of value to a buyer in making their decision to purchase, primarily, this will be information impacting on title to the property or ongoing financial liability of ownership;
- information should be in an accessible form, easily understood and capable of being relied on by the buyer; and
- a single legal framework should be established providing consistency in the content and timing of disclosure and remedies available for a failure to comply.

The seller disclosure scheme implemented by the Act is drafted broadly in accordance with the recommendations in the Seller Disclosure Report. Under the scheme, a seller will be required to give the buyer a disclosure statement and any prescribed certificates that are applicable to the lot, before the buyer signs the contract for sale.

Achievement of policy objectives

The Regulation achieves the policy objectives by replicating the provisions of the *Property Law Regulation 2013* relating to prescribed subordinate legislation and prescribed mortgages, and by prescribing the following matters relating to the seller disclosure scheme:

- the information which must be included in the disclosure statement for a lot;
- the documents (prescribed certificates) applicable to a lot which must be given to the buyer;
- when a seller is not required to give a body corporate certificate for a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997* or a plan under the *Building Units and Group Titles Act 1980* (a BUGTA scheme);
- the warnings and other statements to be included in the disclosure statement for the sale of a lot; and
- matters that are not material matters for a disclosure statement for the sale of a lot.

Replicating provisions of the *Property Law Regulation 2013* relating to prescribed subordinate legislation and prescribed mortgages

The Regulation replicates the provisions of the *Property Law Regulation 2013* which prescribe the following matters:

- subordinate legislation that can either:
 - (a) render voidable or unenforceable any contract or disposition concerning property that is made, entered into or effected contrary to the subordinate legislation; or
 - (b) for a contract for the sale of land—give a party to the contract a right to terminate the contract for a failure by another party to comply with the subordinate legislation; and
- the types of mortgages that impose additional duties on a mortgagee exercising a power of sale to sell the property at market value, including adequately advertising the sale, obtaining reliable evidence of the property's value, maintaining the property, and selling the property by auction, unless it is appropriate to sell it in another way.

Prescribed information for disclosure statement for sale of lot

The Regulation prescribes the following information which must be included in the disclosure statement for the sale of a lot:

- the name of the seller;
- the address and lot-on-plan description of the lot;
- whether the lot is included in a community titles scheme or a BUGTA scheme;
- the details of each unregistered encumbrance on the lot;
- the zoning of the lot;
- information relating to contamination and environmental protection under the *Environmental Protection Act 1994*;
- whether the lot is affected by an application or order in relation to a tree on the lot made under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*;
- whether the lot is affected by a notice issued by a Commonwealth, State or local government entity about a transport infrastructure proposal in relation to the lot;
- whether the lot is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth);
- whether the lot is affected by a notice of intention to resume the lot or any part of the lot issued by any entity;
- whether there is a relevant pool for the lot;
- whether there is a commercial office building of more than 1,000m² on the lot; and
- information relating to rates and water services for the lot;
- if the lot was subject to a residential tenancy agreement under the *Residential Tenancies and Rooming Accommodation Act 2008* during the 12 months before the contract of sale was signed by the buyer—the day of the last rent increase, if any, for the residential premises during that period; and
- if the lot was subject to a rooming accommodation agreement under the *Residential Tenancies and Rooming Accommodation Act 2008* during the 12 months before the contract of sale was signed by the buyer—the day of the last rent increase, if any, for each of the residents' rooms during that period.

Prescribed certificates for disclosure statement for sale of lot

The Regulation prescribes the following documents (each a prescribed certificate) which must be given to the buyer along with the disclosure statement:

- a title search showing interests registered under the *Land Title Act 1994* for the lot;
- a copy of the plan of survey registered under the *Land Title Act 1994* for the lot;
- if a notice is required to be given under the *Queensland Building and Construction Commission Act 1991*, section 47 in relation to building work carried out on the lot under an owner-builder permit within the last 6 years—a copy of the notice;
- if there is an unsatisfied show cause notice or enforcement notice under the *Building Act 1975*, section 246AG, 247 or 248 or the *Planning Act 2016*, section 167 or 168 in relation to the lot—a copy of the notice;

- if there is a notice or order in effect from a local, State or Commonwealth government, a court or tribunal or a competent authority requiring work to be done or money to be spent in relation to the lot—a copy of the notice or order;
- if the seller is required to give the buyer a notice under the *Environmental Protection Act 1994*, section 347(2), 369C(2) or 408(2) in relation to the sale of the lot—a copy of the notice;
- a copy of any document given to the seller in relation to:
 - an application or order in relation to a tree on the lot made under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*;
 - whether the lot is affected by a notice issued by a Commonwealth, State or local government entity about a transport infrastructure proposal; and
 - whether the lot is affected by a notice of intention to resume the lot or any part of the lot issued by any entity;
- if there is a relevant pool for the lot—(i) a pool compliance certificate for the pool; or (ii) a notice under the *Building Act 1975*, section 246ATM that there is no pool safety certificate in effect for the pool;
- if the lot is included in a community titles scheme—(i) a copy of the most recent community management statement for the scheme as recorded under the *Land Title Act 1994* or another Act; and (ii) either a copy of the body corporate certificate for the lot or, if particular circumstances apply, an explanatory statement for the lot; and
- if the lot is included in a BUGTA scheme—either a copy of the body corporate certificate for the lot or, if particular circumstances apply, an explanatory statement for the lot.

When seller may give statement instead of body corporate certificate for lot included in community titles scheme or BUGTA scheme

For a lot included in a community titles scheme or a BUGTA scheme, the Regulation prescribes the circumstances when an explanatory statement for the lot may be given to a buyer instead of a body corporate certificate. An explanatory statement for a lot is a document made by the seller of the lot stating a copy of the body corporate certificate for the lot is not attached and the reasons under the Regulation why the seller has not been able to obtain a copy of the body corporate certificate for the lot.

For the sale of a lot in a community titles scheme, the Regulation provides that an explanatory statement for a lot is a prescribed certificate if any of the following apply:

- the body corporate for the scheme has advised the seller in writing that the body corporate does not have records that could be used to prepare a body corporate certificate; or
- the regulation module applying to the scheme provides there must be a committee and no committee has been chosen, and if the module applying to the scheme provides for a body corporate manager to be engaged to carry out the functions of the committee and no body corporate manager has been engaged.

For the sale of a lot in a BUGTA scheme, the Regulation provides that an explanatory statement for a lot is a prescribed certificate if any of the following apply:

- the body corporate has advised the seller in writing that the body corporate does not have records that could be used to prepare a body corporate certificate;

- no committee for the body corporate for the BUGTA scheme has been elected or appointed and no body corporate manager of the body corporate for the BUGTA scheme has been appointed.

Warnings and other statements to be included in approved form for disclosure statement

The Regulation prescribes the warnings and other statements about the following matters which must be included in the approved form for the disclosure statement:

- information not included in the disclosure statement (for example, information about flooding or other natural hazard history, structural soundness of the building or pest infestation, and current or historical use of the property);
- registered encumbrances;
- land use, planning and environment;
- buildings and structures;
- rates and services; and
- community titles schemes and BUGTA schemes.

Matters that are not material matters for disclosure statement for sale of lot

The Act provides for the buyer to terminate the contract if the seller of a lot gives the buyer a disclosure statement or prescribed certificate that is inaccurate or incomplete in relation to a material matter. A regulation may prescribe a matter affecting a lot which is not a material matter entitling a buyer to terminate the contract.

The Regulation provides that the information relating to rates and water services for a lot is not a material matter affecting the lot.

Commencement of Regulation

The Regulation commences on 1 August 2025 concurrently with the commencement of the Act.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will support the operation of the seller disclosure scheme established under the Act by prescribing the certificates and information required to be included in the disclosure statement given to the buyer of a lot by the seller prior to the buyer signing the contract.

While the scheme may impose some additional costs on a seller or seller's representative in preparing the disclosure documents, it is expected that the overall costs of compliance

will be reduced by clarifying and streamlining the disclosure process. The seller disclosure scheme will also reduce the duplication of costs incurred by multiple prospective buyers undertaking the same searches, and by a particular buyer undertaking searches during the conveyancing process.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

A draft of the Regulation was tabled in Parliament on the introduction of the Property Law Bill 2023 and was published by the former Legal Affairs and Safety Committee as part of its inquiry into the Bill, which included the opportunity for public submissions.

The Property Law Working Group (Working Group), consisting of key legal, property and body corporate stakeholder organisations, has been consulted extensively during the development of the Regulation, including in relation to the disclosure statement certificates prescribed for use under the seller disclosure scheme and exceptions to providing a body corporate certificate.