



# Land Sales Act 1984

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Queensland

# Land Sales Act 1984

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# Land Sales Act 1984

## An Act to regulate certain sales of land

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Land Sales Act 1984*.

#### 2 Objects of Act

The objects of this Act are—

- (a) to facilitate property development in Queensland; and
- (b) to protect the interests of consumers in relation to property development; and
- (c) to ensure that proposed lots are clearly identified; and
- (d) to achieve the objects mentioned in paragraphs (a) to (c) without imposing procedural obligations on local governments or MEDQ in addition to their or its obligations under the Planning Act or the Economic Development Act.

#### 3 Application of Act generally

- (1) This Act applies to the sale of a proposed lot if, when the proposed lot becomes a lot, it will be situated in Queensland.
- (2) For subsection (1), it does not matter where the contract for the sale was entered into.
- (3) This Act does not apply to the sale of a proposed lot if—
  - (a) the sale is part of a large transaction; or

(b) the sale arises from the reconfiguration of land into not more than 5 lots.

(4) In this section—

**large transaction** means the sale of 6 or more proposed lots if—

- (a) the seller of each proposed lot is the same person; and
- (b) the buyer of each proposed lot is the same person; and
- (c) the sale is the subject of—
  - (i) a single contract; or
  - (ii) 2 or more contracts entered into within 24 hours.

**reconfiguration**, in relation to land, means reconfiguration by subdivision or amalgamation.

#### **4 Act does not apply to particular State leasehold land**

(1) A regulation may declare that, subject to any stated conditions, this Act does not apply to the whole or part of land the subject of—

- (a) a stated miners homestead under the *Land Act 1994*, chapter 8, part 7, division 2; or
- (b) a stated lease or a stated class of lease under the *Land Act 1994*.

(2) If a person contravenes a condition to which a declaration under subsection (1) is subject, the Supreme Court may, on the application of a buyer under a contract for the sale of a proposed lot to which the declaration relates, order the person to comply with the condition.

#### **5 Relationship with Fair Trading Inspectors Act 2014**

(1) The *Fair Trading Inspectors Act 2014* (the **FTI Act**) enacts common provisions for this Act and particular other Acts about fair trading.

(2) Unless this Act otherwise provides in relation to the FTI Act, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under this Act.

(3) In this section—

*inspector* means a person who holds office under the FTI Act as an inspector for this Act.

## 6 Definitions

The dictionary in schedule 1 defines particular terms used in this Act.

# Part 2 Sale of proposed lots

## Division 1 Preliminary

### 7 References to things done by or in relation to buyer or seller

(1) This section applies in relation to a provision of this part that refers to—

- (a) a thing required or permitted to be done by or in relation to a buyer or seller of a lot or proposed lot; or
- (b) a thing having been done by or in relation to a buyer or seller of a lot or proposed lot.

(2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—

- (a) personally; or
- (b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

## 8 Restriction on selling State leasehold land

- (1) A person may sell a proposed lot that is State leasehold land, other than a development lease, only if—
  - (a) the chief executive under the *Land Act 1994* has made a subdivision offer for the proposed subdivision of the lot under section 176A of that Act; and
  - (b) the lessee of the land has accepted the subdivision offer under the *Land Act 1994*.

*Note—*

See the *Land Act 1994*, section 403T for requirements for acceptance of offers under that Act.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) A person may sell a proposed lot that is a development lease only if the Minister has consented, under the *Land Act 1994*, section 290J, to a plan of subdivision for the development lease dividing the development lease into proposed lots.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) A contract for the sale of a proposed lot entered into in contravention of subsection (1) or (2) is void.
- (4) Any person who paid an amount under a contract mentioned in subsection (3) may recover the amount, together with any interest accrued on the amount since it was paid, as a debt from the person to whom the amount was paid.
- (5) In this section—

***development lease*** means an existing development lease issued under the *Land Act 1962*, part 9, division 1 that is taken to be a term lease under the *Land Act 1994*, section 476.



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## Division 2                      Disclosure requirements

### 9                      Application of div 2 if option granted

- (1) Section 10, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—
  - (a) section 10(1) requires the seller to give the documents mentioned in section 10(1)(a) or (b) to the buyer in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of termination under section 10 relating to the giving of the documents applies in relation to—
    - (i) the option; and
    - (ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.
- (3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 10(1) does not require the seller to give the documents to the buyer.
- (4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 10 before entering into the contract for the sale.
- (5) In this section—

*buyer* means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.

*seller* means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.

## 10 Documents to be given by seller to buyer

- (1) The seller of a proposed lot must give the proposed buyer of the lot, before the proposed buyer enters into a contract for the sale of the lot—
  - (a) a disclosure plan and disclosure statement for the proposed lot; or
  - (b) a copy of the plan of survey for the proposed lot approved by the relevant local government under the Planning Act or by MEDQ under the Economic Development Act.
- (2) The seller of a proposed lot does not fail to give the buyer a disclosure plan or disclosure statement under subsection (1)(a) merely because the plan or statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.
- (3) If the seller of a proposed lot fails to comply with subsection (1), the buyer may terminate the contract for the sale of the lot by written notice given to the seller before the contract is settled.
- (4) In this section—

*disclosure plan* means a disclosure plan complying with section 11.

*disclosure statement* means a disclosure statement complying with section 12.

## 11 Requirements for disclosure plan

- (1) A disclosure plan may comprise 1 or more documents and must include—
  - (a) for a proposed lot intended to be a volumetric format lot—the volumetric format lot particulars for the lot; or
  - (b) for a proposed lot intended to be a standard format lot—the relevant lot particulars for the lot.
- (2) A disclosure plan must be prepared by a cadastral surveyor.

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*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (3) The disclosure plan must be substantially complete.
- (4) In this section—

***appropriate contour intervals*** means contour intervals of not more than—

- (a) for a proposed lot of not more than 2,000m<sup>2</sup>—50cm in height; or
- (b) for a proposed lot of more than 2,000m<sup>2</sup>—1m in height.

***existing surface contours***, of a proposed lot for which there is no operational work, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

***relevant lot particulars***, for a proposed lot intended to be a standard format lot, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) a description of the dimensions of the lot as bearings and distances;
- (d) identification of the proposed orientation of the lot by reference to north;
- (e) if there is operational work for the lot—
  - (i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and
  - (ii) the location of any retaining walls forming part of the work; and
  - (iii) the height of any retaining walls forming part of the work or, if the height varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and

- (iv) the following information about any fill that is part of the work—
  - (A) the depth of the fill;
  - (B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;
  - (C) if the compaction of the fill will not be done in accordance with that Australian Standard, the nature of the departure from the standard.
- (f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

***standard format lot*** see the *Land Title Act 1994*, schedule 2.

***volumetric format lot*** see the *Land Title Act 1994*, schedule 2.

***volumetric format lot particulars***, for a proposed lot intended to be a volumetric format lot, means the following—

- (a) the proposed number of the lot;
- (b) an isometric representation of the lot;
- (c) the area of the projected footprint of the lot;
- (d) the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;
- (e) identification of the proposed orientation of the lot by reference to north;
- (f) if the lot is proposed to contain a building or be located in a building—the floor level on which the lot is proposed to be located.

## 12 Requirements for disclosure statement

- (1) A disclosure statement for a proposed lot must be signed by the seller and state the following—

- 
- (a) that the seller has given the buyer a disclosure plan for the proposed lot under section 10;
  - (b) whether a development approval has been granted for—
    - (i) reconfiguring a lot for the proposed lot; or
    - (ii) any operational work for the proposed lot;
  - (c) that the seller must—
    - (i) settle the contract for the sale of the proposed lot not later than 18 months after the buyer enters into the contract for the sale of the lot; and
    - (ii) give any other documents required to be given to the buyer under section 14(3) at least 14 days before the contract is settled.
- (2) The disclosure statement must be substantially complete.
- (3) In this section—

*development approval* means—

- (a) a development approval under the Planning Act; or
- (b) a PDA development approval under the Economic Development Act.

### **13 Variation of disclosure plan by further statement**

- (1) This section applies if the contract for the sale of a proposed lot has not been settled and—
- (a) the seller becomes aware that information in the disclosure plan was inaccurate as at the day the contract was entered into; or
  - (b) the disclosure plan would not be accurate if now given as a disclosure plan.
- (2) The seller must, at least 21 days before the contract is settled, give the buyer a further document (the *further statement*)—
- (a) rectifying the information in the disclosure plan; and

- (b) explaining, in plain English, the differences between the information in the disclosure plan and the information in the further statement.

*Example—*

The depth of fill required for the lot has changed from that disclosed in the disclosure plan. The further statement must rectify the information by indicating the new depth of fill and explain, in plain English, that the depth of fill has changed and identify what the new depth of fill is.

- (3) The further statement must be—
  - (a) signed by the seller; and
  - (b) prepared by a cadastral surveyor.
- (4) The buyer may terminate the contract if—
  - (a) it has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure plan was, or has become, inaccurate; and
  - (c) the termination is effected by written notice given to the seller within 21 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.
- (5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure plan is taken to be constituted by the disclosure plan and any further statement.
- (6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—
  - (a) the contract has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

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## Division 3                      Settlements

### 14            Settlement and documents to be given before settlement

- (1) The seller of a proposed lot must settle the contract for the sale of the lot not later than 18 months after the buyer enters into the contract for the sale of the lot.
- (2) Subsection (3) applies if the seller of a proposed lot does not give the buyer a copy of the plan of survey for the proposed lot, approved by the relevant local government under the Planning Act or by MEDQ under the Economic Development Act, before the buyer enters the contract for the sale of the lot.
- (3) The seller must give the buyer of the proposed lot, at least 14 days before the contract is settled—
  - (a) a copy of the plan of survey for the lot registered under the *Land Act 1994* or *Land Title Act 1994* (**registered plan**); and
  - (b) a statement prepared by a cadastral surveyor to the effect that there are no differences between the information contained in the registered plan and the information contained in the disclosure plan for the lot given to the buyer under section 10.
- (4) For subsection (3)(b), if the information contained in the disclosure plan is rectified by a further statement given to the buyer under section 13, the reference to the information contained in the disclosure plan means the information as rectified.
- (5) If the seller fails to comply with subsection (1) or (3), other than because of the buyer's default, the buyer may terminate the contract for the sale of the proposed lot by written notice given to the seller before the contract is settled.

## **Division 4                      Amounts held in trust accounts**

### **15            Definitions for div 4**

In this division—

***prescribed trust account***, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***recognised entity*** means any of the following—

- (a) a law practice;
- (b) the public trustee;
- (c) a real estate agent.

### **16            Payment of particular amounts**

This division applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest



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**17 Amounts paid under s 16 to be held in prescribed trust account**

(1) The person to whom the amount is paid must pay the amount directly to—

(a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—

(i) a law practice at its office in Queensland;

(ii) a real estate agent carrying on the business of a real estate agent; or

(b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—

(a) held by the entity in a prescribed trust account; and

(b) dealt with by the entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

**18 Disposal of amount held in prescribed trust account**

(1) A recognised entity that is paid an amount under section 17(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

*Note—*

See also section 22, which prohibits contracting out of a provision of this Act.

## **19 Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 17(1) in a prescribed trust account may invest the amount if—
- (a) either of the following applies—
- (i) the contract or instrument authorises the investment;
- (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
- (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

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## Division 4A                      Off-the-plan contracts—sunset clauses

### 19A    Application of division

This division applies if a buyer and seller enter into an off-the-plan contract and the contract includes a sunset clause.

### 19B    Definitions for division

In this division—

*off-the-plan contract* means—

- (a) a contract for the sale of a proposed lot; or
- (b) a contract that grants a person an option to purchase a proposed lot.

*registrar* means the registrar of titles under the *Land Title Act 1994*, schedule 2.

*relevant event*, for an off-the-plan contract, means—

- (a) the registration by the registrar of the plan of subdivision for the proposed lot the subject of the contract; or
- (b) the creation by the registrar of a separate indefeasible title for the proposed lot the subject of the contract; or
- (c) settlement of the contract; or
- (d) another event prescribed by regulation as a relevant event.

*sunset clause*, for an off-the-plan contract, means a term of the contract that provides for the contract to be terminated if a relevant event does not happen by the sunset date.

*sunset date*, for an off-the-plan contract, means—

- (a) for a relevant event other than settlement of the contract—

- (i) the day on or by which the relevant event for the contract must happen; or
- (ii) if the contract provides for the parties to the contract to extend the day mentioned in paragraph (i) to a later day—the later day; or
- (b) for a relevant event that is settlement of the contract, the day that is—
  - (i) the day the seller must settle the contract; or
  - (ii) if the buyer does not terminate the contract under section 14(5) and the parties agree on another date (the *later settlement day*) on which the seller must settle the contract—the later settlement day.

### **19C No automatic termination under sunset clause**

- (1) A sunset clause cannot automatically terminate an off-the-plan contract.
- (2) However, if an off-the-plan contract contains a sunset clause that purports to automatically terminate the contract, the clause is taken to mean that the contract may be terminated on, or after, the sunset date under this division.

### **19D When seller may terminate under sunset clause**

- (1) A seller of a proposed lot may terminate an off-the-plan contract under a sunset clause only if—
  - (a) the seller—
    - (i) gives the buyer a sunset clause notice; and
    - (ii) receives the buyer’s consent, in writing, to the termination of the off-the-plan contract under the sunset clause; or
  - (b) the Supreme Court has made an order under section 19F permitting the seller to terminate the contract under the sunset clause; or

- 
- (c) subject to subsection (2)—a regulation prescribes another way (the *prescribed way*) for the seller to terminate an off-the-plan contract under the sunset clause.
- (2) A regulation under subsection (1)(c) may only be made if the Minister is satisfied the prescribed way will provide adequate consumer protection for a buyer.
- (3) In this section—
- sunset clause notice* means a notice, in writing, given by the seller to the buyer at least 28 days before the sunset date, that states the following information—
- (a) that the seller proposes to terminate the contract on the sunset date;
- (b) that the seller may only terminate the contract under the sunset clause if the buyer consents in writing to the proposed termination;
- (c) the reasons the seller proposes to terminate the contract;
- (d) that the buyer must respond to the notice no later than the day immediately before the sunset date.

### **19E Buyer's obligation on receipt of sunset clause notice**

- (1) This section applies if a buyer of a proposed lot is given a sunset clause notice under section 19D.
- (2) The buyer must consider the information stated in the sunset clause notice and—
- (a) act reasonably in the circumstances; and
- (b) respond to the notice within the time stated in the notice.
- (3) If the buyer does not respond to the sunset clause notice, the failure to respond is not to be taken as evidence that the buyer consents to the termination of the contract under the sunset clause the subject of the notice.

## **19F Supreme Court order to terminate under sunset clause**

- (1) A seller of a proposed lot under an off-the-plan contract may apply to the Supreme Court for an order permitting the seller to terminate the contract under a sunset clause.
- (2) The Supreme Court may make an order permitting the seller to terminate the off-the-plan contract under the sunset clause if the seller satisfies the court it is just and equitable in the circumstances.
- (3) In deciding whether it is just and equitable to make the order the Supreme Court must consider the following matters—
  - (a) the terms of the off-the-plan contract, including whether a term is intended to avoid the operation of this division;

*Note—*

Under section 22 a contractual provision intended to avoid operation of this division would, to the extent it did so, be void.

- (b) whether, in the performance of their obligations under the contract, the seller acted unreasonably or in bad faith;
- (c) whether matters beyond the seller's reasonable control affected—
  - (i) the seller's ability to settle the contract; or
  - (ii) to the extent the seller's business is related to the performance of the off-the-plan contract—the viability of the seller's business;
- (d) whether, in the circumstances, there is a reasonable prospect of the seller settling the contract;
- (e) if the seller can not settle the contract, what actions the seller has taken to—
  - (i) settle the contract; and
  - (ii) minimise the effect of any matter that affected the seller's ability to settle the contract;
- (f) the effect of settling the contract on the seller;
- (g) the effect of terminating the contract on the buyer;

- (h) the extent of the buyer's performance of their obligations under the contract;
  - (i) whether the proposed land the subject of the contract has increased in value;
  - (j) any other matter the court considers relevant;
  - (k) any other matter prescribed by regulation.
- (4) The seller must pay the costs of the buyer in relation to a proceeding for the order unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to the termination of the contract under the sunset clause.

## **Division 5                      Other provisions**

### **20            Termination under this part**

- (1) This section applies if the buyer terminates a contract under this part.
- (2) The seller must, within 14 days after the termination, repay to the buyer—
  - (a) any amount paid to the seller or the seller's agent towards the purchase of the lot; and
  - (b) any interest that accrued on the amount while it was held by the seller or the seller's agent.
- (3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.
- (4) An amount repayable under subsection (2) may be recovered as a debt.

## 21 Security instruments

- (1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
- (a) by a recognised entity on behalf of the seller; or
  - (b) by any other person on behalf of the seller; or
  - (c) by the seller.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
- (a) the instrument is returnable to the buyer according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
- (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.



- (6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).

- (8) In this section—

*prescribed place* means—

- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or
- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

## Part 3 Miscellaneous provisions

### 22 Contracting out prohibited

A contract for the sale of a proposed lot is void to the extent to which it purports to exclude, restrict or otherwise change the effect of a provision of this Act.

### 23 Responsibility for acts or omissions of representatives

- (1) In this section—

*representative* means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

*state of mind* of a person includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

(2) Subsections (3) and (4) apply in a proceeding for an offence against this Act.

(3) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

## 24 Evidentiary provision

In a proceeding for an offence against this Act, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

## 25 Delegations

(1) The chief executive of the department may delegate the chief executive’s powers under this Act to an appropriately qualified public service employee.

(2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example—*

a person's classification level in the public service

## **26 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of no more than 20 penalty units for contravention of a regulation.

# **Part 4 Transitional provisions**

## **Division 1 Transitional provision for Sustainable Planning and Other Legislation Amendment Act 2012**

### **27 Application of s 27 as amended by Act No. 3 of 2012**

- (1) Section 27 as amended by the *Sustainable Planning and Other Legislation Amendment Act 2012*, section 22B applies to an instrument relating to the sale of a proposed lot if—
  - (a) the instrument is in force, and settlement has not been effected, immediately before commencement; or
  - (b) the instrument is made on or after commencement.
- (2) Subsection (1)(a) applies—
  - (a) regardless of whether the sunset period ended or ends before, on or after commencement; and

- (b) even if an action for specific performance of the purchaser's obligations under the instrument has been started by the vendor, but not completed, before commencement.
- (3) Subsections (1)(a) and (2) apply despite the *Acts Interpretation Act 1954*, section 20.
- (4) In this section—

**commencement** means the commencement of the *Sustainable Planning and Other Legislation Amendment Act 2012*, section 22B.

**sunset period** means the 3½ year period mentioned in section 27(1)(b) or, if that period is extended by a regulation made under section 28, the extended period.

## Division 2                      Transitional provisions for Land Sales and Other Legislation Amendment Act 2014

*Note—*

The following provisions provide for the continued application of part 3 of this Act as in force before the commencement to particular contracts for the sale of particular proposed lots—

- the *Body Corporate and Community Management Act 1997*, section 444
- the *Building Units and Group Titles Act 1980*, section 141
- the *South Bank Corporation Act 1989*, section 140.

### 28                      Definitions for div 2

In this division—

**amendment Act** means the *Land Sales and Other Legislation Amendment Act 2014*.

**commencement** means the commencement of this division.

**contract** includes agreement as defined under old section 6.

*e-conveyancing* see the *Property Law Act 1974*, section 58A.

*lot* includes allotment as defined under old section 6.

*new*, in relation to a provision, means the provision as in force immediately after the commencement.

*old*, in relation to a provision, means the provision as in force at any relevant time before the commencement.

## **29 Continuation of particular rights of prosecution**

- (1) This section applies if a person is alleged to have committed, before the commencement, an offence against a provision of old part 2.
- (2) Proceedings for the offence may be continued or started and the court may hear and decide the proceedings, as if the amendment Act had not been enacted.
- (3) This section applies despite the Criminal Code, section 11.

## **30 Application of old s 8(2)**

Old section 8(2) continues to apply in relation to an agreement made in contravention of old section 8(1) or (1A) before the commencement.

## **31 Disclosure requirements**

- (1) New part 2, division 2 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

*Note—*

See also section 38.

- (2) Old sections 9 and 10 continue to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.

- (3) However, if, at any time before the settlement of the contract for the sale of the proposed lot, the parties to the contract agree to settle the sale using e-conveyancing, old sections 9 and 10 are to be read with the following changes—
- (a) old section 9(5) is omitted and the following provision inserted—
- ‘(5) If the vendor or the vendor’s agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor’s agent before the settlement of the sale of the allotment.’;
- (b) old section 10(1)(a) is omitted and the following provision is inserted—
- ‘(a) the sale of the proposed allotment has not been settled;’;
- (c) old section 10(3)(b)(ii) is omitted and the following provision inserted—
- ‘(ii) settle the sale of the allotment.’;
- (d) old section 10(4)(a) is omitted and the following provision inserted—
- ‘(a) for a contravention of subsection (2)—before the settlement of the sale of the allotment; or’

## **32 Application of new s 14 and old s 10A to contracts**

- (1) New section 14 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.
- (2) Old section 10A continues to apply after the commencement in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (3) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing, old section 10A is to be read with the following changes—

- 
- (a) old section 10A(1) is omitted and the following provision inserted—
    - ‘(1) The vendor of a proposed allotment must settle the sale of the allotment not later than 18 months after the purchaser enters upon the purchase of the allotment.’;
  - (b) old section 10A(4) is omitted and the following provision inserted—
    - ‘(4) If the vendor contravenes this section, the purchaser may avoid the instrument relating to the sale by written notice given to the vendor before the sale is settled.’
  - (4) The purchaser may avoid the contract under old section 10A(4) for a contravention of the section by the vendor (including as it is applied under subsection (3)) only if the contravention arose other than because of the purchaser’s default.

### **33 Application of new pt 2, div 4**

New part 2, division 4 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

### **34 Application of old ss 11 and 12 to existing contracts**

- (1) Old sections 11 and 12 continue to apply in relation to amounts paid under a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing—
  - (a) old section 11(1) is to be read by omitting ‘, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor’ and inserting ‘(but excluding an amount payable at settlement)’; and

(b) old section 11 is to be read by omitting section 11(3).

### **35 Application of old s 11A to existing contracts**

- (1) Old section 11A continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing, old section 11A(2) is to be read by omitting ‘before the registrable instrument of transfer for the allotment is given to the purchaser’ and inserting ‘before the sale of the allotment is settled’.

### **36 Existing declarations under old s 18**

A declaration in effect under old section 18 immediately before the commencement is, from the commencement, taken to be a declaration under new section 4.

### **37 Undecided applications under old s 19**

- (1) Except to the extent provided under subsection (3), an application under old section 19 that has not been decided at the commencement lapses at the commencement.
- (2) Subsection (3) applies if, at the commencement—
  - (a) a contract is conditional on an application being granted under old section 19(2); and
  - (b) the application has not been decided.
- (3) The application is taken to be granted without any condition being imposed under old section 19(2A).



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**38 Application of new pt 2 if existing decision about exemption**

- (1) New part 2 does not apply to the sale of a proposed lot forming part of the reconfiguration of land into not more than 5 lots even if the chief executive—
  - (a) refused to grant an exemption for the reconfiguration under old section 19; or
  - (b) granted an exemption under old section 19 for the reconfiguration subject to conditions.
- (2) In this section—

*reconfiguration*, in relation to land, means reconfiguration by subdivision or amalgamation.

**Division 3                      Transitional provision for Body  
Corporate and Community  
Management and Other Legislation  
Amendment Act 2023**

**39 Application of pt 2, div 4A to existing off-the-plan contracts**

- (1) This section applies to an off-the-plan contract that—
  - (a) is entered into before the commencement; and
  - (b) immediately before the commencement—is not settled.
- (2) Part 2, division 4A applies to the off-the-plan contract.

## Schedule 1 Dictionary

### section 6

**buyer**, of a proposed lot, means a person who signs a contract for the sale of the lot intended to bind the person (absolutely or conditionally) to buy the lot.

**cadastral surveyor** means a cadastral surveyor within the meaning of the *Surveyors Act 2003*.

**Economic Development Act** means the *Economic Development Act 2012*.

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**law practice** means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

**lot**—

- (a) means land the boundaries of which are shown on a plan of survey registered under the *Land Act 1994* or *Land Title Act 1994*; but
- (b) does not include a lot to which any of the following Acts apply—
  - (i) the *Body Corporate and Community Management Act 1997*;
  - (ii) the *Building Units and Group Titles Act 1980*;

(iii) the *South Bank Corporation Act 1989*.

**MEDQ** means MEDQ under the Economic Development Act.

**off-the-plan contract**, for part 2, division 4A, see section 19B.

**operational work** see the Planning Act, schedule 2.

**Planning Act** means the *Planning Act 2016*.

**prescribed trust account**, for part 2, division 4, see section 15.

**proposed lot**—

- (a) means land that will become a lot on the registration of a plan of survey under the *Land Act 1994* or *Land Title Act 1994*; but
- (b) does not include a proposed lot to which any of the following Acts apply—
  - (i) the *Body Corporate and Community Management Act 1997*;
  - (ii) the *Building Units and Group Titles Act 1980*;
  - (iii) the *South Bank Corporation Act 1989*.

**public trustee** means the public trustee under the *Public Trustee Act 1978*.

**real estate agent** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

**recognised entity**, for part 2, division 4, see section 15.

**reconfiguring a lot** see the Planning Act, schedule 2.

**registrar**, for part 2, division 4A, see section 19B.

**relevant event**, for an off-the-plan contract, for part 2, division 4A, see section 19B.

**seller**, of a proposed lot, means a person who signs a contract for the sale of the lot intended to bind the person (absolutely or conditionally) to sell the lot.

**State leasehold land** means land leased under the *Land Act 1994* or a miners homestead under the *Land Act 1994*.

*sunset clause*, for an off-the-plan contract, for part 2, division 4A, see section 19B.

*sunset date*, for an off-the-plan contract, for part 2, division 4A, see section 19B.