

Property Legal Update

Sink or Swim: Amendments to Queensland Swimming Pool Laws

What's new – in a nutshell

On 1 December 2010 new legislation commenced regarding the registration and regulation of swimming pools in Queensland. Under the new laws, 11 different pool safety standards have been replaced with 1 pool safety standard, the Queensland Development Code, Mandatory Part 3.4 (**Code**).

The Code now applies to all pools, including indoor pools and pools contained within hotels, motels, caretaker residences, caravan parks, backpackers hostels and mobile home parks.

The key changes to swimming pool laws include the requirement for a pool safety certificate (**Certificate**) when selling, buying or leasing a property with a pool, the requirement for both new and existing pools to comply with new standards by 30 November 2015, or **earlier** if sold or leased before then and the requirement that all swimming pools be registered by 4 May 2011.

Spas and portable pools that are capable of being filled to a depth of 300 millimetres or more, have a volume of 2000 litres or more and have a filtration system are covered by the new laws.

Existing pools

Owners of existing pools have a phase-in period of 5 years in which to comply with the new pool safety laws, or **earlier** if they sell or lease the property before 30 November 2015.

Shared and non-shared pools

A **non-shared pool** is one that is only accessible to residents of one dwelling. Examples of **non-shared pools** include those in private houses or a private spa on the balcony of a unit, while pools that are accessible to residents of two or more dwellings are **shared pools**.

Selling a property with a pool

If a Certificate has not been issued prior to entering a contract of sale for a property with a pool, the seller must give the buyer a [Form 36 – Notice of No Pool Safety Certificate](#). A copy of the form must also be given to the Department of Infrastructure and Planning. If the pool is a shared pool, a copy must also be given to the body corporate (usually the owner of the shared pool) where applicable.

For **non-shared pools**, if a Certificate has not been issued prior to settlement, the buyer has a responsibility within 90 days from the settlement date to obtain a Certificate. This also applies for shared pools, however for settlements occurring on or before 1 September 2012, the pool owner has until 30 November 2012 to obtain a Certificate.

If a Certificate has been issued, the seller must give the buyer a copy of the Certificate before settlement.

Contracts of sale entered into after 1 December 2010 using the 8th edition REIQ Contract for Houses and Residential are conditional upon the buyer obtaining either confirmation that the Pool Safety Requirements have been met and a Certificate has been issued or confirmation of works required before a Certificate can be issued by the Pool Safety Inspection Date. If this condition is not satisfied the buyer has the right to terminate the Contract.

Under the terms of the 8th edition Contract, the seller also has the right to terminate if the buyer does not give notice to the seller on or before the Pool Safety Inspection Date that a Certificate has or has not been issued.

Selling a property with a pool at auction

If no Certificate has been issued for a pool attached to property sold at auction, the owner or their agent (i.e. auctioneer or real estate agent) must ensure that prospective buyers are given copies of the Form 36 prior to entering a contract of sale.

Leasing a property with a pool

Before a new or renewed lease for a property with a **non-shared pool** is entered into, the owner must ensure a Certificate has been issued.

For **shared pools**, the Landlord owner must give the proposed tenant a copy of the Certificate if one has been issued. If no Certificate is in effect, the Landlord owner must give a Form 36 to the proposed tenant, the body corporate and the Department of Infrastructure and Planning before the lease is entered into.

For leases entered into on or before 1 September 2012, the body corporate has until 30 November 2012 to obtain a Certificate, whilst for leases entered into or renewed after 1 September 2012, the body corporate has 90 days to obtain a Certificate.

For **shared pools**, a Certificate must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool. A Certificate does not need to be displayed for **non-shared pools**.

Owners of **non-shared pools** do not need to provide a copy of the Certificate to their tenants. For **shared pools**, Landlord owners need to provide either a copy of the Certificate or a copy of the Form 36 (if no Certificate has been issued) to the prospective tenant.

Non-compliance

The current maximum penalty for failing to comply with the new swimming pool regulations is \$16,500.

How to obtain a pool safety certificate

Certificates must be issued by licensed pool safety inspectors. A list of licensed pool safety inspectors is available at www.smarteda.qld.gov.au/pools/inspectors/inspectorSearch. You can also search by property address or lot number regarding whether a Certificate has been issued for the property at www.dlqp.qld.gov.au/pool-safety/pool-safety-register.

General

Should you require any further information in relation to the new swimming pool legislation, please contact Rhett Oliver or Allan McKenzie.

Contact:

Rhett Oliver
Partner

T: +61 7 3002 8702

F: +61 7 3221 3068

E: rhetto@hemhart.com.au

Allan McKenzie
Specialist Counsel

T: +61 7 3002 8731

F: +61 7 3221 3068

E: allanm@hemhart.com.au

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