

Selling a property with a pool

New pool safety laws—does your pool pass the test?

Swimming pools should be fun. However, drowning is the leading cause of death in Queensland for children aged one to four years. Supervision of kids and teaching them to swim at a young age can save lives. Effective pool fencing also helps keep kids safe. This is why new pool safety laws have been introduced.

This fact sheet is for buyers, sellers and real estate agents. There is a separate fact sheet provided for buildings in which short-term accommodation is provided, such as hotels, motels and backpacker hostels.

Pools affected by the laws

The pool safety laws apply to pools associated with houses, townhouses, units, hotels, motels, backpacker hostels, homestay accommodation and caravan parks (Classes 1–4 buildings).

Pool owners have until 30 November 2015 to comply with the new pool safety standard, or earlier if they sell or lease their property before then.

Different rules apply depending on whether the pool is a shared pool or non-shared pool.

Non-shared pools

If a pool is only accessible to residents of one dwelling, such as a private house or private spa on a unit balcony, it is a non-shared pool.

Shared pools

If residents of two or more dwellings can use a pool, such as a body corporate pool, it is a shared pool.

Spas and portable pools

Spas and portable pools that are capable of being filled with 300 millimetres or more of water, have a volume of 2000 litres or more and have a filtration system, are covered by the new laws. Bathroom spas that are used as baths are not included.

Contracts of sale

Before entering into a contract

If no pool safety certificate is in effect before entering into a contract of sale for a property with a pool, the seller must give the prospective purchaser a Notice of no pool safety certificate—Form 36.

Form 36 advises that the pool may not comply and the steps that must be taken to comply. Form 36 is intended to help prospective purchasers make a more informed decision about purchasing the property.

Before settlement

If a pool safety certificate is in effect, the seller must give the buyer a copy of the certificate before settlement.

If a pool safety certificate is not in effect before settlement, the seller must give the purchaser a Form 36 with the settlement date on the form.

A copy of the form must also be sent to the Department of Infrastructure and Planning. For shared pools, a copy must also be given to the body corporate.

After settlement

For non-shared pools, if a certificate is not in effect before settlement, the purchaser has 90 days from settlement to obtain a pool safety certificate.

For shared pools, if a pool safety certificate is not in effect before settlement, the pool owner, usually the body corporate, has 90 days from settlement to obtain a pool safety certificate. However, for settlements occurring on or before 1 September 2012, a phase in period applies—the pool owner has until 30 November 2012 to obtain a pool safety certificate for the pool.

What happens if a property is being sold at auction?

If a property with a pool is being sold at auction and no pool safety certificate is in effect, the owner or their agent (e.g. auctioneer, real estate agent, etc.) must ensure that copies of the Form 36 are given to the prospective purchaser/s before entering into a contract of sale.

Pool safety certificates

How do I get a pool safety certificate?

Only pool safety inspectors who are licensed by the Pool Safety Council can issue pool safety certificates. If you have any doubt about whether a person is a licensed pool safety inspector, you should ask to see their licence card. You can also check their licence on the pool safety register.

The pool safety register provides a list of all licensed pool safety inspectors and is available at www.dip.qld.gov.au/poolsafetyregister. The register includes inspector contact details and displays the Local Government areas in which they work.

You can also use the pool safety register to check if a pool safety certificate is in effect for a pool. You can search the register by property address or lot number.

For recently built pools, a final inspection certificate or certificate of classification given by the building certifier can be used as a pool safety certificate for one year from its date of issue for shared pools and two years for non-shared pools. However, this only applies if the certificate was given against the latest pool safety standard.

All licensed building certifiers in Queensland are automatically licensed as pool safety inspectors until 4 November 2011. However, it is not mandatory for them to undertake pool safety inspections if they choose not to. Inspectors who do not wish to undertake pool inspections can be removed from the register.

Any complaints about a pool safety inspector should be made to the Pool Safety Council.

Does the pool safety certificate need to be displayed?

Pool safety certificates for shared pools must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool. Owners of non-shared pools do not need to display their pool safety certificates.

Is a new pool safety certificate required before each sale?

No. A pool safety certificate is valid for one year for shared pools and two years for non-shared pools regardless of how many times the property is resold during this period.

Where there is a shared pool, does every unit owner need to have the pool inspected separately?

No. The owner of the shared pool, usually the body corporate, needs to obtain the certificate and make it available to unit owners.

Noncompliance

What happens if the pool doesn't comply at inspection?

If a pool safety inspector inspects a pool and is not satisfied that it complies, they must issue a Pool safety nonconformity notice—Form 26. Form 26 advises the pool owner how their pool does not comply and what work needs to be done to comply. Some pool safety inspectors are licensed to carry out certain minor repairs. Pool owners can also carry out some repair and maintenance work.

The Building Regulation 2006 sets out the repairs and maintenance work pool owners can carry out themselves and minor repairs that appropriately licensed pool safety inspectors can carry out. Examples of repairs and maintenance work pool owners can carry out can be found in the Tips to make your pool safer flyer available at www.dip.qld.gov.au/poolsafetyguidelines

Once a pool safety inspector has given a Pool safety nonconformity notice—Form 26, the pool owner has three months to undertake the repairs and arrange a reinspection of the pool. It is an offence for the pool owner to ask a different inspector to reinspect the pool within this period. However, in some circumstances, such as where the inspector becomes ill, the pool owner can apply to the Pool Safety Council to allow another inspector to reinspect the pool.

If the pool owner does not ask the inspector to reinspect the pool within three months, the inspector must notify the Local Government. The Local Government can then take the necessary enforcement action to ensure the pool complies with the relevant standards. Pool owners can appeal against a Form 26 if they disagree with it.

What are the penalties for noncompliance?

Penalties of up to \$16 500 for individuals and \$82 500 for corporations apply for noncompliance with the pool safety laws. On-the-spot fines of \$1600 for individuals and \$4800 for corporations can also apply. Enforcement action is taken by Local Governments and, in some cases, by the Department of Infrastructure and Planning.