

Information for real estate agents, property managers and other property agents

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



Swimming pools should be fun. However, drowning is a 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.

Pool safety information for property agents

This fact sheet is for real estate agents, property managers and other property agents. It relates to the new pool safety laws and how they affect sales, leases and other accommodation agreements.

Flood and cyclone exemptions

In response to the 2011 Queensland floods and Cyclone Yasi, changes have been made to introduce a statewide delay to the requirement for pool safety certificates for rental properties with non-shared pools. This applies from 8 January to 8 July 2011 and allows these properties to be leased without a pool safety certificate.

Instead, the owner needs to give a warning notice (Form 37) to the tenant.

All other aspects of the pool safety laws still apply. Pool owners still need to ensure their pool complies with the pool safety laws applicable to when the pool was built.

Pools affected by the laws

The laws introduce a new pool safety standard, which both new and existing pools must meet. This includes indoor and outdoor pools associated with houses, townhouses, units, hotels and motels, caretaker residences, caravan

parks, backpackers, hostels, mobile home parks and homestays (class 1 to 4 buildings).

Spas are covered by the new laws, however, spas in bathrooms that are emptied after each use are not included.

Who needs to comply with the new laws?

Owners of both new and existing pools are required to meet the new pool safety standard by 30 November 2015, or earlier if the property is sold or leased before this time.

Key changes

From 1 December 2010, pool owners must have a valid Pool Safety Certificate—Form 23 from a licensed pool safety inspector at the trigger events outlined in this fact sheet.

However, in some circumstances where there is no valid certificate in place, the Notice of No Pool Safety Certificate—Form 36 can be used to advise that no certificate exists. This gives prospective purchasers the opportunity to negotiate with the seller.

Have the standard contracts changed?

The Real Estate Institute of Queensland and Queensland Law Society have updated several of their standard sale contracts to incorporate pool safety information.

Pool safety forms

The two key pool safety forms for property agents are:

- Pool Safety Certificate—Form 23
- Notice of No Pool Safety Certificate—Form 36.

Pool Safety Certificate—Form 23

This form indicates that the pool has been inspected by a licensed pool safety inspector and complies with the pool safety standard.

If a pool safety inspector finds a pool does not comply, they must give the pool owner a Pool Safety Nonconformity Notice—Form 26. Property agents are not required to take any action with this form. The form is used to indicate to the pool owner what steps are required to make the pool comply.

Once the pool safety inspector is satisfied the pool complies, they must give the owner a Pool Safety Certificate—Form 23. This certificate is also placed on the pool safety register for public viewing.

Notice of No Pool Safety Certificate—Form 36

This form is used by owners when a pool safety certificate is not in effect. Notice of No Pool Safety Certificate—Form 36 advises the purchaser or pool owner that they have 90 days to obtain a pool safety certificate.

Recently built pools

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 is only allowed if the certificate was given against the latest pool safety standard.

Shared and non-shared pools

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

If residents of two or more dwellings can use a pool, such as a body corporate pool, it is a shared pool. All pools associated with hotels, motels, backpackers and guesthouses are shared pools.

Contracts of sale

Before entering into a contract

If a pool safety certificate is not in effect for a property with a pool, the seller must give the prospective purchaser the Notice of No Pool Safety Certificate—Form 36 before entering into a contract of sale.

Before and after settlement

The seller must give the buyer a valid pool safety certificate before settlement.

Alternatively, if a pool safety certificate is not in effect, the seller must give the purchaser the Notice of No Pool Safety Certificate—Form 36 before settlement.

The purchaser (or the pool owner for shared pools) then has 90 days from settlement to obtain a pool safety certificate. Phase-in periods apply in some cases, for example a body corporate has two years to comply.

Auctions

If a pool safety certificate is not in effect at an auction, the seller or their agent must ensure a copy of the Notice of No Pool Safety Certificate—Form 36 is available for all prospective purchasers. The seller

or their agent must also give the final purchaser a copy before entering into a contract of sale.

Leases and other accommodation agreements

Non-shared pools

Before entering into a new or renewed lease or other accommodation agreement (e.g. letting out a holiday house) for a property with a non-shared pool, the owner must ensure a pool safety certificate is in effect for the pool. The Notice of No Pool Safety Certificate—Form 36 cannot be given.

Unlike shared pools there is no 90 day compliance period and there is no phase-in period.

Shared pools

For shared pool leases, the owner must give the tenant a copy of a pool safety certificate if one is in effect. If there is no certificate in effect, the owner must give the Notice of No Pool Safety Certificate—Form 36 to the tenant, to the body corporate and to the Department of Infrastructure and Planning.

For shared pool leases associated with short-term accommodation (e.g. motel/motel stays) where there is no pool safety certificate in effect, property owners are not required to provide each guest with the Notice of No Pool Safety Certificate—Form 36. The Form 36 must still be submitted to the Department of Infrastructure and Planning before entering into an accommodation agreement. The pool owner must then obtain a pool safety certificate within 90 days of the accommodation agreement being entered into (also see phase-in periods).

Phase-in periods

A pool safety certificate is only required when selling, buying, leasing or entering into another type of accommodation agreement for a property with a pool.

For shared pools on properties used exclusively for short-term accommodation, pool owners (e.g. bodies corporate) have until 31 May 2011 to obtain a pool safety certificate. For other shared pools, owners have until 30 November 2012 to obtain a pool safety certificate.

Pool safety certificates

Only licensed pool safety inspectors can issue pool safety certificates. An online register of pool safety inspectors is available at www.dip.qld.gov.au/poolsafetyregister

Does the pool safety certificate need to be displayed?

Pool safety certificates for shared pools must be clearly displayed near the main entrance to the premises or at the access point for the pool. Owners of non-shared pools do not need to display their pool safety certificates.

How long is the pool safety certificate valid for?

Pool safety certificates are valid for one year for shared pools and two years for non-shared pools, regardless of how many sales, leases or other accommodation agreements occur during this period.

However, to encourage early uptake, pool safety certificates obtained for shared pools before 1 March 2011 are valid for two years.

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.