

6 May, 2023

KEY CHANGES PROPOSED

- New disclosure requirements for sale of all freehold land
- Disclosure Statement to be given before buyer signs contract
- Disclosure Statement to attach Body Corporate Certificate and CMS for lots in community titles schemes



If passed, the Property Law Bill 2023 will entirely change the pre-contract disclosure obligations of sellers of freehold land in Queensland

THE PROPERTY LAW BILL 2023

NEW DISCLOSURE OBLIGATIONS FOR SELLERS ARE IMINENT

The Bill

The Property Law Bill 2023 was introduced into Parliament on 24 February and seeks to replace the current *Property Law Act 1974*. If passed, it will create a statutory seller disclosure scheme for sales of freehold land in Queensland. This will have significant impacts on the real estate industry as it will require a seller to give a buyer a disclosure statement and “prescribed documents” **before** the buyer signs a contract. For lots in community titles schemes, this means a seller must give at least 2 documents to a buyer before contract – a Disclosure Statement and a Body Corporate Certificate. The Body Corporate Certificate is to replace the existing “section 206 disclosure”.

New Disclosure Statement

The new Disclosure Statement is still in the drafting stage. What we do know is that it will be a prescribed form, which must be completed with information that is “true and correct” at the time it is given to the buyer. It must also be signed by the seller and buyer. Some exceptions to giving the disclosure apply, including where the seller and buyer are related parties or where the buyer is a government authority or listed corporation.

Q: What information is likely to be prescribed by the form?

Prescribed information is likely to include detail about:

BODY CORPORATE CERTIFICATE

- Bodies corporate will have 5 business days to provide the certificate
- Implied warranty searches recommended to verify body corporate certificates
- We can prepare seller disclosures attaching body corporate certificates for clients



- Lot and plan as well as zoning;
- Any unregistered or statutory encumbrances over the lot that will not be released at settlement;
- Building energy efficiency for commercial buildings; and
- Notices, orders or transport infrastructure proposals issued by government entities to the seller that may affect title of the lot after settlement.

Q: What documentation will be given with the Disclosure Statement?

It is anticipated the following documents (where applicable) will be required to be attached to the Disclosure Statement:

- Body Corporate Certificate (see below);
- Community Management Statement (CMS);
- Title search;
- Registered survey plan;
- Exclusive use bylaws;
- Pool compliance certificate;
- Tree applications or orders;
- Certain notices under the *Environmental Protection Act 1994*;
- Notices regarding 'unlicensed building work';
- Most recent rates notice; and
- Most recent water services notice.

Q: Who can prepare the Disclosure Statement?

The Disclosure Statement can be prepared by the seller or their agent, including a search agency like Quicksearch Qld.

Body Corporate Certificate

Currently, a seller of a lot in a community titles schemes is required to give a buyer a "section 206 disclosure statement" before signing a contract. This is generally a 2-page document the seller or search agent prepares after conducting a search of body corporate records. Prudent sellers often provide a buyer with a more comprehensive disclosure statement with implied warranties, otherwise known as a "full disclosure", which will include documents such as general meeting minutes, sinking fund forecast and CMS. This is to ensure the seller can meet their section 223 implied warranties under the *Body Corporate and Community Management Act 1997* as to "latent and patent defects" in the common property or body corporate assets. The Bill proposes that section 206 disclosure statements will be entirely replaced by the new Body Corporate Certificate.

Q: What information is likely to be prescribed by the Body Corporate Certificate?

Like the Disclosure Statement, the Body Corporate Certificate is still in draft form. However, it will be a much more complex document than the current section 206 disclosure, with the current draft running to 11 pages! Prescribed information is likely to include detail about:

- Membership of the body corporate;
- The seller's s 223 implied warranties;
- Lawful use of the lot;
- Contact details for the body corporate and body corporate manager;
- Lot, plan and module information;
- Any building management statement;
- Lot entitlements;
- By-laws;
- Levy information including due dates, discounts and penalties;
- Current and recommended sinking fund balance;
- Improvements to the common property for which the lot owner is responsible;
- Body corporate assets;
- Insurance;
- Service contractors;
- Letting agent details; and
- Amounts payable in relation to the lot.

Q: How will sellers obtain a Body Corporate Certificate?

Unlike the existing section 206 disclosure, it is proposed the Body Corporate Certificate will be given under the authority of the body corporate. This means it may only be prepared by the body corporate or its agent. Body corporates will have **5 business days** to provide the certificate. Quicksearch Qld can obtain certificates on behalf of sellers and agents.

Q: What will this mean for our contracts?

Disappointingly, it seems likely sellers may no longer elect to prepare their own body corporate disclosure or engage agents to do this on their behalf to speed up the contract process. This will no doubt cause headaches for many real estate agents who often need to provide seller disclosure at very short notice. Quicksearch Qld can assist with obtaining certificates, including preparing them as an agent for the body corporate to expedite the process if the body corporate consents.

Q: What risks do defective Body Corporate Certificates carry?

Unfortunately, defective body corporate certificates will carry risks for sellers. Buyers will be able to terminate contracts where they are given a certificate that is inaccurate or incomplete in relation to a

material matter affecting the lot. Sellers must independently search body corporate records if they wish to verify information included in a body corporate certificate.

Q: How will sellers satisfy their implied warranties once the changes come into effect?

Once the changes come into effect, in order for sellers to meet their s 223 implied warranties to disclose information in body corporate records about “latent and patent defects” in the common property or body corporate assets, they will need to undertake their own separate search of the body corporate records, or as suggested by the parliamentary committee reviewing the legislation, engage a search agent to do so on their behalf.

Likely timeframe for changes

It is expected the Bill could be passed as early as within the next few weeks. Whilst a timeframe for implementation has not been published, the writer has communicated directly with the Department of Justice and Attorney General (DJAG), which has indicated a transition period of approximately 10-12 months from the date of passage is anticipated.

Don't panic, we can help!

At Quicksearch Qld, we are very much across the detail of the Bill and proposed seller disclosure regime. Our Principal, Jessica Haddley (a former practising solicitor) has led the charge to form the Strata Search Agents Association Qld Inc (SSAAQ). In her capacity as President of SSAAQ, Jessica has met with representatives of DJAG to propose changes to the Bill that will be more workable for sellers and real estate agents. She was invited to give evidence before the Legal Affairs and Safety Committee Parliamentary enquiry into the Bill and expects to be included in the committee that will consider the final draft of the Body Corporate Certificate in the coming months. Jessica continues to engage with other stakeholders, including the REIQ and Queensland Law Society in her role at SSAAQ.

How we can help your business

At Quicksearch Qld customer service is **everything**. We understand in real estate, time is *always* of the essence. Once the changes come into effect, we will assist our clients by preparing Disclosure Statements, carrying out implied warranties searches and obtaining Body Corporate Certificates. We will continue to keep you updated in 2023 about the changes and the implementation timeline.

How to contact us about the proposed changes

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