



## Navigating Queensland's new Seller Disclosure Regime: Legal obligations and InfoTrack's Solution



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## **Seller disclosure** *Property Law Act 2023*

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## Overview

- Legislative structure
- Seller disclosure statement (Form 2)
- Prescribed Information
- Prescribed certificates
- Giving disclosure
- Buyer termination
- REIQ contracts
- FAQs and practical tips



### Property Law Act 2023

Act No. 27 of 2023

An Act to consolidate and provide for the law relating to property, and to amend this Act, the Body Corporate and Community Management Act 1997, the Building Units and Group Titles Act 1980, the Land Title Act 1994, the Limitation of Actions Act 1974, the Property Occupations Act 2014 and the Acts mentioned in schedule 3 for particular purposes, and to repeal the Property Law Act 1974

[Assented to 2 November 2023]

## Disclosure obligations - section 99 PLA

**Before** a contract for the sale of a lot is signed **by the buyer**, the seller must give the buyer—

- (a) a ***disclosure statement*** for the lot – the **approved Form 2**; and
- (b) each ***prescribed certificate*** applicable to the lot.

**No contracting out or waiver of obligation by buyer unless permitted by the PLA (s 98).**

## Key concepts

- A **lot** is a lot under the *Land Title Act 1994*.
  - The requirements **do not** apply to the sale of a proposed lot (land or CTS) or to leasehold land under *Land Act 1994*
- A **contract** includes an option
- **Option** is defined
  - See definitions in section 95 PLA
- Disclosure obligations apply to sale by **auction** – see section 103 for details
- Who can give disclosure – any person authorised to act for the seller – see sections 97 and 101

## What's out?

- *Related parties* (defined s 96) and buyer waives compliance with s 99 prior to signing contract
- State or government body is buyer
- Boundary realignments
- Contracts formed on the exercise of an option where the buyer and seller are the same as the parties to the contract
- Price is more than \$10 million (incl GST) and buyer waives compliance with s 99 prior to signing contract

*Note: other exceptions – see s 100 PLA for complete details*

## Disclosure documents

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### Form 2 - Seller disclosure statement

- Must be in the approved form
- Must contain the ***prescribed information*** – see section 8 of Regulation
- Must contain the ***prescribed warnings*** – see Schedule 1 of Regulation  
(section 99(2) of PLA 2023)
- Forms – [Forms | Queensland Courts](#)

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## Form 2 – *prescribed information*

16 items listed in section 8(1)(a) to (p) of *Property Law Regulation*

- Form 2 includes all prescribed information

Some of the 16 items are simple

- Seller's name
- Address of lot
- Lot on plan description
- Whether CTS or BUGTA parcel

## Form 2 – *prescribed information*

Some are complex – for example:

- contamination matters has 5 sub-parts
- unregistered encumbrances – definition includes statutory encumbrances – regulation 8(2)
- Zoning – defined term

## Form 2 - Seller disclosure statement

Form 2 must be completed with the information that is true at the time the statement is given to the buyer

- Section 104(1)(b) PLA 2023 – 3 elements required before buyer can terminate.
- Look for material inaccuracy of any part of disclosure or prescribed certificate e.g. documents registered on title, CMS amended, resumption notice received etc.

## Prescribed Certificates

1. Listed in *Property Law Regulation*, s 5
2. Separate documents to Form 2
3. Can be given with Form 2 or separately, not required to be attached
4. Failure to give a prescribed certificate that is required entitles a buyer to terminate – no materiality test

## Prescribed certificates

- Title search
- Plan registered under *Land Title Act 1994*
- Owner Builder Notice – if the seller is required to give the buyer a notice under the *Queensland Building and Construction Commission Act 1991*, s 47 before the buyer signs the contract for the sale of the lot, a copy of the notice

*(Note: the s 47 notice must be given/signed in accordance with Queensland Building and Construction Regulation 2018, s 22)*

## Prescribed certificates

- Contaminated Land notices (EPA), s 408, s 369C, s 347
- Show Cause / Enforcement Notices – Building Act, Planning Act
- Notice or order requiring work to be done
- Resumption document or notice
- Neighbourhood disputes – tree orders and applications
- Transport infrastructure – notices about proposals
- Pool safety certificate or Notice of no pool safety

## Body Corporate Certificates

Body corporate certificate is a *prescribed certificate*

- When seller not required to give body corporate certificate for CTS scheme or BUGTA parcel – section 6 and 7 Regulation – an *explanatory statement* for a lot

Body Corporate and Community Management Regulation  
Modules +Building Units and Group Titles Regulation

- Content of approved form of body corporate certificates and fees for certificates

## Preparing Disclosure

**If disclosure requirements in other statutes do I have to comply with them or the PLA?**

- Seller needs to comply with disclosure requirements stipulated by other legislation.
- For example, the owner builder notice process under *QBCC Act 1991* must be followed
- Compare QBCC with notices under *Environmental Protection Act 1994* which just have to be given to the buyer by the seller “before agreeing to dispose of the land to someone else”. Generally interpreted as ‘before buyer signs the contract’.



## Buyer termination

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### Consequences of non-compliance

- Section 99 – give disclosure before buyer signs contract
- Regulation – prescribed certificates, information and warnings

Failure to comply - section 104 PLA – termination by the buyer

- No Form 2 or prescribed certificate – termination at any time before settlement – no materiality requirement
- Inaccurate Form 2 or PC – termination for material matter

*No statutory right to compensation for inaccurate disclosure*

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## If failure to comply is a breach of another statute

If the failure to give Form 2 or prescribed certificate or inaccuracy in Form 2 or PC:

- is also a failure to comply with another Act; and
- the other Act provides consequences for the failure, then

PLA, s 104(2) does not apply to the failure covered by the other Act and the remedy under the other Act applies

Consequences include termination of contract, contract of sale is ineffective or seller is taken to have given a contractual warranty – not a penalty or offence (EPA, Trees, QBCC)

**Note: If multiple failures then buyer can choose which termination right to exercise**

## REIQ contracts

## Two new contracts

Contract for Sale and Purchase of Residential Real Estate – 1<sup>st</sup> edition

Contract for Sale and Purchase of Commercial Real Estate – 1<sup>st</sup> edition

- Terms updated to align with seller disclosure obligations
- Clause 7.8 – rights of termination (for certain clauses) governed by PLA if s 99 applies
- Land tax adjustments allowed
- CTS and BUGTA warranties added
- New Body Corporate Records Inspection Condition
- Extension of Settlement Date for late unsigned of electronic settlement workspace

## Buyer termination – contractual rights

**REIQ contract:** If section 104 of PLA applies, then the contractual right to terminate for the same failure to disclose will **not** apply.

- For example: if seller fails to provide a copy of a show cause notice under *Building Act*, s 247 this will be both a failure to comply with PLA 2023, s 99 and will mean the warranty in cl 7.4(1)(a) of the contract is inaccurate.
- Clause 7.8 will provide that the buyer can only exercise the termination right under PLA, s 104 and not under cl 7.4(3).

# FAQs and practical tips

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## Transition in the lead up to 1 August

How should you approach contract signing in the last week of July?

1. Seller disclosure provisions apply to contracts entered into after commencement (PLA, s 251) but
2. Disclosure is required prior to buyer signing the contract

If buyer signs on 30 July 2025 should the seller give the buyer Form 2 + certificates?

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## Transition in the lead up to 1 August

### Considerations:

- If buyer signs on 30 July:
  - seller signs and notifies acceptance prior to 11.59pm on 31 July – not subject to PLA
  - If seller cannot sign and notify buyer, advise seller not to sign.
  - On 1 August give buyer form 2 and certificates, consider if contract needs to be new edition (advisable), then seller signs.
- PLA and Regs commence on 1 August. Prior to this time Form 2 is not 'approved form' so risk that if given prior to 1 August non-compliance with s 99.

## Can the new Contract be used before 1 August?

New version is drafted to apply to both PLA disclosure and no disclosure

However - risks to consider:

- new contract does have some different terms to existing contract (need to understand the impact on the client)
- the Seller disclosure form may not be operative earlier than 1 August. If not operative then it may not be a valid 'approved' form

## Further support and materials

QLS and Lexon support is available

See [QLS Property Central](#) page for updates

[Seller Disclosure Roadshow](#) – recording available through QLS Shop

Lexon Protocol tools incorporate the requirements, obligations and rights relating to seller disclosure



Questions?

Book a Demonstration



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