

Selling a property with a pool

Information for buyers, sellers and real estate agents

Swimming pools should be fun. However drowning is one of the leading causes of death in Queensland for children aged under five. Supervising young children and teaching them to swim at a young age can save lives. Effective pool fencing also helps keep young children safe.

Queensland's pool safety laws apply to pools associated with houses, townhouses, units, hotels, motels, backpacker hostels, home stay accommodation and caravan parks (class 1–4 buildings).

Types of pools

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.

Shared pools

If residents of two or more dwellings can use a pool (for example, in a residential unit complex) 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 2,000 litres or more or have a filtration system, are covered by the pool safety laws. Bathroom spas that are used as baths are not included.

Compliance period

Owners of the above pools have until 30 November 2015 to ensure that their pool complies with the pool safety standard or earlier if they sell or lease their property before this time.

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 *Form 36* —*Notice of no pool safety certificate*.

A Form 36 advises that there is no pool safety certificate in effect. 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 36 must also be sent to the Department of Housing and Public Works. 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.

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 a pool safety inspector who is licensed by the Pool Safety Council can issue a pool safety certificate. If you have any doubt about whether a person is a licensed pool safety inspector, you should ask to see their licence. 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.hpw.qld.gov.au/PoolSafetyRegister.aspx.

The register includes inspector contact details and 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/plan number.

For recently built pools, a *Form 17—Final inspection certificate* or *Form 11—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 a shared pool and two years for a non-shared pool. However, this only applies if the certificate was given against the current pool safety standard (after 1 December 2009).

A Form 17 may also be given by a building certifier – and used instead of a pool safety certificate – where a barrier for an existing pool is replaced or sufficiently altered and inspected by a building certifier. However, it is important to note that either a pool safety inspector or a building certifier may inspect a pool barrier, and a building certifier is only required if a building development approval was mandatory for that particular structure.

Does the pool safety certificate need to be displayed?

A pool safety certificate for a shared pool must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool. The owner of a non-shared pool does not need to display their pool safety certificate.

Is a new pool safety certificate required before each sale?

No. A pool safety certificate is valid for one year for a shared pool and two years for a non-shared pool regardless of how many times the property is re-sold 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.

Non compliance

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 *Form 26—Pool safety non conformity notice*. A Form 26 advises the pool owner how their pool does not comply and what work needs to be done to make it comply.

It is important to note that if the sale (or lease) of a property triggers a 90 day period in which to gain a certificate, the issue of a Form 26 does not change or extend the date by when a pool safety certificate has to be obtained.

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 that pool owners can carry out can be found in the *Tips to make your pool safer* fact sheet available at www.hpw.qld.gov.au/PoolSafetyFactSheets.aspx.

If the pool owner wishes to have the pool re-inspected within three months of issue of the Form 26, they must re-engage the original inspector. It is an offence for the pool owner to ask a different inspector to re-inspect the pool within this period without written approval from the Pool Safety Council.

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 re-inspect the pool within the three month period.

If the original inspector, who issued the Form 26, does not receive a request from the pool owner to re-inspect the pool within three months, the inspector must notify the local government. The local government can then take any necessary enforcement action to ensure the pool complies with the relevant standard.

If the pool was built before 1 December 2009, there has been no sale or lease and there has been no certificate previously in effect for the pool, an earlier standard may still apply to the pool. In this case the local government will enforce compliance with the standard that was in force when the pool was constructed. However, given that the pool owner will have to comply with the current standard by 30 November 2015 (or earlier if the property is sold or leased), pool owners are encouraged to take the opportunity when altering their pool barriers to upgrade to the current standard.

If a pool owner disagrees with a Form 26, they may appeal to a Building and Development Dispute Resolution Committee established under the *Sustainable Planning Act 2009*.

What are the penalties for non compliance?

Penalties of up to \$18,150 for individuals and \$90,750 for corporations apply for non compliance with the pool safety laws. On the spot fines of \$1,760 for individuals and \$5,280 for corporations can also apply.

Enforcement action is taken by local governments and, in some cases, by the Department of Housing and Public Works.

Dividing fences and pool owners

In many cases, using a common boundary fence is the most efficient way to comply with the pool safety requirements.

Provisions in the *Building Act 1975* and the *Neighbourhood Disputes Resolution Act 2011*, facilitate a common sense approach to fencing work such as encouraging agreements between neighbours and 'like for like' replacement of fences.

A fact sheet for pool barriers on common boundaries is available at www.hpw.qld.gov.au/PoolSafetyFactSheets.aspx.

For more information

visit: www.hpw.qld.gov.au/PoolSafety

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