

Serial 13

Law of Property Amendment (Sales of Residential Property) Bill 2005

Mr Wood

**A BILL
for
AN ACT**

to amend the *Law of Property Act*

NORTHERN TERRITORY OF AUSTRALIA
LAW OF PROPERTY AMENDMENT (SALES OF RESIDENTIAL
PROPERTY) ACT 2005

Act No. [] of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2005

AN ACT

to amend the *Law of Property Act*

[Assented to [] 2005]

[Second reading [] 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Law of Property Amendment (Sales of Residential Property) Act 2005*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act amended

This Act amends the *Law of Property Act*.

4. New Part 6, Division 5

After section 78 –

insert

Division 5 – Sales of residential property

78A. Definitions

In this Division –

"agent" means a real estate agent within the meaning of section 5(2) of the *Agents Licensing Act*;

"bore" includes a well;

"bore status report" means a bore status report prescribed by the Regulations;

"building status report" means a building status report prescribed by the Regulations;

"encumbrance" includes an unregistered encumbrance;

"family member", of a person, means –

- (a) the person's spouse or de facto partner; or
- (b) the person's parent or child; or
- (c) the person's brother, sister, half-brother or half-sister; or
- (d) the parent or child of the person's spouse or de facto partner;

"lawyer" means a legal practitioner or conveyancing agent;

"pest inspection report" means a pest inspection report prescribed by the Regulations;

"pest treatment certificate" means a pest treatment certificate prescribed by the Regulations;

"prospective purchaser", of residential property, includes a prospective grantee of an option to purchase the property;

"related person" has the same meaning as in section 56C(3) of the *Taxation (Administration) Act*;

"required documents" has the meaning in section 78C;

"rescission notice" has the meaning in section 78H;

"residence" means a building (or part of a building) used, or intended for use, as a single dwelling, and includes outbuildings or other

structures used in conjunction with the building or part of a building;

"residential property" has the meaning in section 78B;

"septic tank status report" means a septic tank status report prescribed by the Regulations;

"vendor", of residential property, means a person who –

- (a) under the *Land Title Act* is the registered owner of the fee simple interest in the property; and
- (b) offers to sell, or invites an offer to purchase, the interest;

"working day" has the same meaning as in the *Public Holidays Act*.

78B. Residential property

Residential property is –

- (a) vacant land on which the construction of one or more residences is permitted; or
- (b) land on which there is, or there is under construction, one or more residences; or
- (c) a building lot, lot or unit within the meaning of the *Unit Titles Act*, used or intended for use as a residence.

78C. Required documents

(1) The required documents for a sale of residential property are a copy of each of the following documents:

- (a) any encumbrance affecting the property;
- (b) for each residence covered by the proposed contract, a copy of each of the following:
 - (i) a building status report;
 - (ii) if the residence is still under construction – a written agreement to give a pest treatment certificate for the residence to the purchaser at completion of the contract;
 - (iii) if the residence has been completed but not occupied – a pest treatment certificate for the residence;
 - (iv) if the residence has been occupied – a pest inspection report;

- (v) if water is supplied to the residence from a bore – a bore status report;
 - (c) if an occupancy permit or approval to occupy on a temporary basis has been granted under the *Building Act* for a residence covered by the proposed contract – the permit or approval;
 - (d) if the Authority within the meaning of the *Swimming Pool Safety Act* has, under that Act, issued a compliance certificate, provisional compliance certificate, acknowledgment notice, provisional acknowledgment notice or temporary acknowledgment notice for a swimming pool at the property – the certificate or notice;
 - (e) if a septic tank is installed on the property – a septic tank status report;
 - (f) if the property is subject to flooding or seepage within 200 m of any residence on the property – a diagram showing the approximate boundary of the 1% annual exceedance probability or seepage line;
 - (g) if the property is in a storm tide hazard area – a storm tide map for the area.
- (2) A report or certificate mentioned in subsection (1) must be prepared by someone who –
- (a) is not –
 - (i) the vendor or the vendor's agent or lawyer; or
 - (ii) a family member of the vendor or vendor's agent or lawyer; or
 - (iii) a member of a firm that the vendor or the vendor's agent or lawyer, or a family member of the vendor or vendor's agent or lawyer, is a member of; or
 - (iv) someone else carrying on a business if the vendor or the vendor's agent or lawyer, or a family member of the vendor or the vendor's agent or lawyer, has a direct or indirect right to participate in the profits of the business; and
 - (b) has the professional indemnity insurance required by the Regulations.
- (3) In addition, an inspection on which a report or certificate mentioned in subsection (1) is based must be carried out not earlier than 3 months before the day the property was first listed for sale by an agent or first advertised for sale.

(4) If the vendor has obtained 2 or more reports in that period, each report is a required document for subsection (1).

78D. Application of Division

(1) This Division applies only to a contract, or proposed contract, for the sale of residential property.

(2) However, this Division does not apply to a contract made before the commencement of this section.

(3) In addition, this Division does not apply to a contract, or proposed contract, for the sale of residential property if –

- (a) the purchaser is a related person of the vendor; or
- (b) both of the following apply:
 - (i) the contract arises from the exercise of an option to purchase the property;
 - (ii) the option was contained in a will or the period for exercise of the option is longer than 60 days.

(4) This Division has effect despite any term of a contract for the sale of residential property to the contrary.

78E. Required documents to be available for inspection

A vendor of residential property must ensure the required documents are available for inspection by a prospective purchaser at all times when an offer to purchase the property may be made to the vendor.

Penalty: If the offender is a natural person – 10 penalty units.

If the offender is a body corporate – 50 penalty units.

78F. Cooling-off period

(1) There is a cooling-off period for every contract for the sale of residential property during which the purchaser may exercise the right under section 78H to rescind the contract.

(2) However, there is no cooling-off period for a contract for the sale of residential property if –

- (a) the purchaser is a corporation; or
- (b) the property is sold by tender; or

- (c) the property is sold by auction; or
 - (d) the contract is made on the same day as the property was offered for sale by auction but passed in and the purchaser was a bidder at the auction; or
 - (e) under section 78G, the purchaser waives the cooling-off period.
- (3) The cooling-off period starts when the contract is made and ends at 5 pm on the 3rd working day after the day the cooling-off period starts.
- (4) The cooling-off period may be extended or shortened by –
- (a) a provision in the contract; or
 - (b) a separate written agreement between the parties before, at or after the time the contract is made (but before the end of the cooling-off period).
- (5) However, a provision or agreement shortening the cooling-off period does not take effect until –
- (a) the purchaser receives legal advice from a lawyer in relation to the shortening of the cooling-off period; and
 - (b) the lawyer signs a certificate that complies with section 78K to that effect; and
 - (c) the purchaser gives a copy of the certificate to the vendor.

78G. Purchaser may waive cooling-off period

The purchaser under a contract for sale of residential property may waive the cooling-off period for the contract if, before signing the contract –

- (a) the purchaser receives legal advice from a lawyer in relation to the effect of the cooling-off period; and
- (b) the lawyer signs a certificate that complies with section 78K to that effect; and
- (c) the purchaser gives a copy of the certificate to the vendor.

78H. Right to rescind during cooling-off period

(1) The purchaser under a contract for the sale of residential property may give the vendor a written notice (a "rescission notice") to the effect that the purchaser rescinds the contract.

(2) The rescission notice may only be given during the cooling-off period but is ineffective if given after completion of the contract.

(3) The rescission notice must be signed by the purchaser or the purchaser's lawyer.

(4) If the question whether a rescission notice has been given arises in a legal proceeding, the burden of proving the giving of the notice is on the purchaser.

78J. Consequences of rescission

(1) This section applies if a rescission notice is given for a contract for the sale of residential property under section 78H.

(2) The contract is taken to be rescinded from the time it was made.

(3) The amount of the deposit paid under the contract must be paid to the purchaser and may be recovered as a debt.

(4) The purchaser and vendor are not liable to pay an amount for damages, costs or expenses.

(5) An agent is not entitled to any commission or expenses from the vendor in relation to the contract.

78K. Certificate

A certificate mentioned in section 78F(5)(b) or 78G(b) complies with this section if it –

- (a) is in writing; and
- (b) is signed by a lawyer who is not –
 - (i) acting for the vendor; or
 - (ii) a member or employee of a firm of which the lawyer acting for the vendor is a member or employee; and
- (c) states it is given for section 78F(5)(b) or 78G(b); and
- (d) states the names of the parties to the contract and details of the residential property the subject of the contract; and
- (e) contains a statement to the effect that the lawyer explained to the purchaser –
 - (i) the nature of the certificate; and

- (ii) the effect of giving the certificate to the vendor.

78L. Purchaser to reimburse vendor for cost of certain reports

On completion of a contract for the sale of residential property, the vendor is entitled to reimbursement from the purchaser for the cost of obtaining the reports and certificates mentioned in section 78C(1) for the property.

78M. Offence for false or misleading report or certificate

(1) A person must not give to a prospective purchaser of residential property a report or certificate mentioned in section 78C(1) for the property that contains information the person knows is false or misleading in a material particular.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state the document was, without specifying which, "false or misleading" to the person's knowledge.

78N. Compensation for false or misleading report or certificate

(1) This section applies if –

- (a) a person purchases residential property under a contract; and
- (b) a report or certificate mentioned in section 78C(1) is made available to the purchaser; and
- (c) the report or certificate is false or misleading in a material particular or is otherwise prepared without the exercise of reasonable skill and care; and
- (d) because of that, the purchaser incurs loss or expense.

(2) The person who prepared the report or certificate is liable to compensate the purchaser for the loss or expense.
