

Queensland property legislation update

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Since the Queensland election in March this year the new government has introduced a number of legislative changes which impact on property transactions. The changes generally relate to the government's mandate to reduce red tape in property transactions as well as election promises to reintroduce the stamp duty reduction for the purchase of a home and wind back the previous government's changes to the lot entitlement provisions of the Body Corporate and Community Management Act 1997.

Red tape reduction

Sustainability declarations

The first change to reduce red tape was the removal of the requirement to prepare a sustainability declaration prior to advertising a residential property for sale. The provisions of both the Building Act 1975 and the Property Agents and Motor Dealers Act 2000 were amended by the Treasury (Cost of Living) and Other Legislation Amendment Act 2012 on 27 June 2012. From that day a seller and real estate agent were no longer required to make available a sustainability declaration to a buyer for a property advertised after that date. The repealed provisions however continue to apply to any sustainability declarations prepared or given to buyers prior to 27 June 2012.

Seller disclosure for sale of lots in a community title scheme

A number of changes are proposed to the disclosure obligations of a seller of a lot in a community titles scheme by the Body Corporate and Community Management Act Amendment Bill 2012.

First the Bill provides for the omission of the requirement in s 206 Body Corporate and Community Management Act 1997 for the seller of a lot to give a community management statement (CMS) as part of a disclosure statement. There is some criticism of this change as reducing the information available to buyers at the time of entry into the contract. As a consequence s 206B which obliged the seller to update the buyer if a new CMS was recorded is also omitted.

Secondly, the Bill amends the obligation in ss 206 and 213 Body Corporate and Community Management Act to include in the disclosure statement details of the

levies, how the contribution and interest schedule lot entitlements are used to determine the levies and a statement that the lot entitlements can be found in the CMS. This obligation is replaced with an obligation merely to state the levies or in the case of s 213 the proposed levies reasonably payable for the lot.

Thirdly existing rights of termination under ss 206 and 209 in relation to the failure to provide a copy of the CMS are expressly retained: ss 414–419.

These amendments will commence on proclamation.

Off the plan sales

The State government is also proposing changes to the Land Sales Act 1984 to simplified the process and update the drafting of the legislation. As part of this review changes may also be proposed to the instalment contract provisions of the Property Law Act 1974. A discussion paper will be released during November outlining the proposed changes. These proposals will be the subject of a further article once released.

Stamp duty changes

Home concession from 1 July 2012

The concession for a home that is not a first home was reintroduced on 1 July 2012 by the Treasury (Cost of Living) and Other Legislation Amendment Act 2012. The re-introduced home concession will apply to contracts for the purchase of a home entered into on or after 1 July 2012. The concession will not apply to transfers or agreements entered into after 1 July where:

- (a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made before 1 July 2012; or
- (b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 July 2012 and exercised on or after 1 July 2012; or
- (c) another arrangement was made before 1 July 2012, the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2012 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 July 2012, would apply in relation to the dutiable transaction.

A residence is a person's "home" if the person's occupation date for the residence is within one year after the persons transfer date for the residential land: Duties Act 2001, s 86(1). The concession may be lost if the buyer fails to occupy the property within one year or leases the property or sells part of it within the one-year period.

First Home Concession from 1 July 2012

For the purchase of a first home an additional concession is applied. The main change from 1 July 2012 is to the amount at which the concession is phased out. Prior to 1 July 2012 the phasing out point was \$600,000. From 1 July 2012, the phasing-out point was reduced to the phasing out point prior to 1 August 2010 which was \$550,000.

The buyer of a first home is entitled to the concession for a home and a rebate for a first home. The combined effect of the concessions is that no duty is payable on consideration of \$500,000. Over \$500,000 a concession will be applied up to a value of \$550,000, after which the first home owner concession will cease. The concession appears in Sch 4A of the Duties Act 2001.

Similar transitional provisions to those outlined above apply in relation to options and new contracts following rescission of contracts entered into before 1 July 2012. A person's home is the person's "first home" if, before acquiring the home:

- (a) the person did not hold, and never before held, an interest in other residential land in Queensland or elsewhere other than:
 - (i) as trustee for another person; or
 - (ii) as lessee; or
 - (iii) as the holder of a security interest; and
- (b) the person was not, and had never been, a vacant land concession beneficiary in relation to land other than the residential land on which the home is constructed.

It should be noted that the lessee exception does not apply to the interest in land of a lessee of a lease:

- (a) of residential land on which a home or first home is constructed; and
- (b) for which a premium, fine or other consideration is payable.

Stamp duty rate increase

From 21 September 2012 stamp duty rates for transactions over \$1M will rise as follows:

Current rate: \$37,125 + 5.25 per cent x (consideration/market value - \$980,000)
New rate: \$38,025 + 5.75 per cent x (consideration/market value - \$1,000,000)

These changes were introduced by the Fiscal Repair Act 2012.

Changes to First Home Owner Grant Act 2000

As part of revenue initiatives announced in the State Budget, the First Home Owner Grant Act 2000 has been amended by the Fiscal Repair Amendment Act 2012 to increase the current grant from \$7000 to \$15,000 for new homes. The increased grant will be available where the commencement date for the eligible transaction is on or after 12 September 2012.

The First Home Owner Grant Act 2000 is also be amended so that, from 11 October 2012, only a contract to purchase or build, and the building by an owner builder of, a new home will be an eligible transaction. The grant will not then be available for the purchase of an existing home.

An *eligible transaction* after 11 October 2012 is therefore defined as —

- (a) a contract made on or after 1 July 2000 for the purchase of a new home in the State; or
- (b) a comprehensive home building contract made by the owner of land in the State, or a person who will on completion of the contract be the owner of land in the State, to have a new home built on the land, if the contract is made on or after 1 July 2000; or
- (c) the building of a new home in the State by an owner builder if the building work starts on or after 1 July 2000.

It also includes a contract for the purchase of a home entered into prior to 11 October 2012 or a building contract for a home entered into prior to 11 October 2012 or a home built by an owner builder if the work starts prior to 11 October 2012.

New home is defined as a home that has not been previously occupied or sold as a place of residence or a substantially renovated home.

A home is a substantially renovated home if —

- (a) the home is the subject of a contract for the purchase of the home; and
- (b) the sale of the home under the contract is, under the A New Tax System (Goods and Services Tax) Act 1999 (Cth), a taxable supply as a sale of new residential premises as defined under ss 40–75(1)(b) of that Act; and
- (c) the home, as renovated, has not been previously occupied or sold as a place of residence.

Proposed changes to lot entitlement provisions of Body Corporate and Community Management Act

The Body Corporate and Community Management Act Amendment Bill 2012 introduced to parliament on 14 September 2012 also includes proposed amendment to the lot entitlement provisions of the BCCM Act.

Reinstatement of last adjustment order entitlements

First, the Bill removes the right of a lot owner to request a reversion to the contribution schedule lot entitlements prior to an adjustment order. The right of a lot owner to request a reversion was inserted into the BCCM Act on 14 April 2011 by the Body Corporate and Community Management (Amendment) Act 2011. Sections 378–390 BCCM Act set out the procedure, timing and relevant considerations for dealing with the motion of an owner for reinstatement of pre-adjustment lot entitlements. From 14 September 2012 this process is no longer available to lot owners.

A reinstatement process that was incomplete on 14 September 2012 is rendered ineffective and will not proceed further. In that case the current lot entitlement for the scheme will remain unchanged: s 399.

If a reinstatement process under ss 379–390 was completed by the lodging of a new CMS prior to 14 September 2012 new ss 401–404. Under s 403 a lot owner in the scheme may submit a request to the committee for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements (these are the lot entitlements in place prior to the reinstatement process under ss 379–390.). This right in s 403 commences on assent.

Within 60 days after receiving the request, the committee must —

- (a) identify the last adjustment order entitlements for the scheme; and
- (b) give written notice (the notice) to each owner of a lot included in the scheme —
 - (i) stating that a request has been submitted to the committee proposing the adjustment of the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, under subdiv 3; and
 - (ii) accompanied by written evidence of the last adjustment order entitlements for the scheme; and

- (iii) stating the committee’s proposed adjustment of the contribution schedule lot entitlements for the scheme; and

- (iv) inviting the owner to make submissions, within a stated period as to what modification, if any, is required to be made to the last adjustment order entitlements under subdiv 3.

The submission period must be at least 28 days after the day on which the owner receives the notice.

After considering any submission made during the submission period, the committee must decide what modification, if any, is required to be made under ss 410–413 to the last adjustment order entitlements for the scheme. These are adjustments arising from subdivisions, amalgamations, boundary changes or material changes.

Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee’s decision. Within 90 days after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the last adjustment order entitlements for the scheme, as modified, if applicable, under subdiv 3 (the changed entitlements).

However, the committee is not required to lodge the CMS within 90 days if during that period —

- (a) an owner of a lot included in the scheme makes an application under s 406; and
- (b) the specialist adjudicator or QCAT makes an order under s 407 for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme and the changed entitlements ordered by the specialist adjudicator or QCAT are different from those decided by the committee.

New Appeal rights

The Bill also introduces new appeal rights in s 47AA where the body corporate has made a decision under s 47A to change the contribution schedule lot entitlements. Section 47A allows the body corporate by resolution without dissent to change the contribution schedule lot entitlements provided the new entitlements are based upon the existing contribution schedule principle for the scheme or another contribution schedule principle.

Section 47AA provides a lot owner with a right to appeal against the decision, presumably despite the fact lot owner has agreed to the change as part of the resolution, on the basis the lot entitlements are not consistent with the relevant contribution schedule principle.

These rights commence on assent.