



Australian Capital Territory

# Civil Law (Sale of Residential Property) Act 2003

A2003-40

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Australian Capital Territory

# Civil Law (Sale of Residential Property) Act 2003

**A2003-40**

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An Act to make provision in relation to the sale of residential property, and for other purposes

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*Notified under the Legislation Act 2001 on 8 September 2003  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Civil Law (Sale of Residential Property) Act 2003*.

### 2 Commencement

This Act commences on 1 July 2004.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*related person*—see the *Duties Act 1999*, dictionary.' means that the term '*related person*' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Sale of residential property

### 6 Application of pt 2

- (1) This part applies to a contract, or proposed contract, for the sale of residential property.
- (2) However, this part does not apply to a contract, or proposed contract, for the sale of residential property if—
  - (a) the contract arises from the exercise of an option to buy the property and—
    - (i) the option was contained in a will or sublease; or
    - (ii) the period for exercise of the option was longer than 60 days; or
  - (b) the buyer is a related person of the seller.

### 7 Definitions for pt 2

In this part:

***building conveyancing inquiry documents***, for a residence, means the documents prescribed under the regulations for this definition.

***building inspection report*** means a building inspection report prescribed under the regulations.

***class A unit*** means a class A unit under the *Unit Titles Act 2001*, section 10.

***class B unit*** means a class B unit under the *Unit Titles Act 2001*, section 11.

***encumbrance*** includes an unregistered or statutory encumbrance.

***lease***—see the *Land (Planning and Environment) Act 1991*, section 159.



***lease conveyancing inquiry documents***, for a property, means the documents prescribed under the regulations for this definition.

***pest inspection report*** means a pest inspection report prescribed under the regulations.

***pest treatment certificate*** means a pest treatment certificate prescribed under the regulations.

***prospective buyer***, of residential property, includes a prospective grantee of an option to buy the property.

***rescission notice*** means a notice given under section 14 (Right to rescind during cooling-off period).

***residence*** means a building (or part of a building) used, or intended for use, as a single dwelling, and includes any outbuildings or other structures used in conjunction with the building or part.

***seller***, of residential property, means a person who—

- (a) has a legal interest in the property that the person is entitled to sell; and
- (b) offers to sell, or invites an offer to buy, the interest.

***sublease***—see the *Land (Planning and Environment) Act 1991*, section 159.

***unapproved structure*** means a structure—

- (a) that is required to be approved under the *Building Act 1972* but has not been approved; or
- (b) the building of which is required to be approved under the *Land (Planning and Environment) Act 1991* but for which an unqualified certificate of occupancy has not been issued under the *Building Act 1972*.

***unit*** means a class A unit or a class B unit.

## 8 Meaning of *residential property*

(1) In this Act:

*residential property* is—

- (a) vacant land on which the construction of 1 or more residences is permitted under the lease; or
- (b) land on which there is (or there is under construction) 1 or 2 residences; or
- (c) a unit.

(2) However, *residential property* does not include—

- (a) land or a unit with an area of more than 3 hectares; or
- (b) land or a unit if the purpose clause of the relevant lease permits a use other than residential or rural residential (except if the use is incidental to a residential or rural residential use); or
- (c) land if the purpose clause of the relevant lease requires development of the land (a ‘developer’s holding lease’).

## 9 Meaning of *required documents*

(1) For this part, the *required documents*, in relation to a sale of residential property, are a copy of the proposed contract for the sale of the property (other than the excluded particulars) including the following documents:

- (a) a copy of the Crown lease;
- (b) a copy of the current edition of the certificate of title;
- (c) a copy of any encumbrance that is shown on the certificate of title (for example, a restrictive covenant or an easement);

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) if there is an encumbrance that is not shown on the certificate of title—a statement about the encumbrance that complies with the requirements (if any) prescribed under the regulations;
- (e) a copy of the lease conveyancing inquiry documents for the property;
- (f) for a unit, a copy of—
  - (i) the units plan; and
  - (ii) the current edition of the certificate of title for the common property;
- (g) for each residence covered by the proposed contract, a copy of each of the following:
  - (i) the building conveyancing inquiry documents for the residence;
  - (ii) the energy efficiency rating statement (if any) required under section 23;
  - (iii) a building inspection report from an inspection carried out not earlier than 3 months before the day the property was first advertised for sale or listed by an agent (and, if the seller has obtained 2 or more reports in that period, each report);
  - (iv) if the residence is still under construction—a written agreement to give a pest treatment certificate for the residence to the buyer at completion of the contract or when the certificate of occupancy is issued;
  - (v) if the residence has been completed but not occupied—a pest treatment certificate for the residence;

- (vi) if the residence has been occupied—a pest inspection report from an inspection carried out not earlier than 3 months before the day the property was first advertised for sale or listed by an agent (and, if the seller has obtained 2 or more reports in the 6 months before that date, each report);
  - (vii) for a residence that is a class A unit—the minutes of meetings of the owner’s corporation, and the executive committee, held in the 2 years before the day the property was first advertised for sale or listed with an agent.
- (2) However—
- (a) the building conveyancing inquiry documents and building inspection report are not required for—
    - (i) a class A unit; or
    - (ii) a residence that has not previously been occupied or sold as a dwelling; or
    - (iii) a residence that is to be erected or developed before completion of the sale (an ‘off-the plan purchase’); and
  - (b) a pest inspection report is not required for a class A unit.
- (3) The statement and reports mentioned in subsection (1) (g) (ii), (iii), (v) and (vi) must have been prepared by someone who—
- (a) is not—
    - (i) a family member of the seller (or the seller’s agent or lawyer); or
    - (ii) a member of a firm that the seller (or the seller’s agent or lawyer), or a family member of the seller (or the seller’s agent or lawyer), is a member of; or

- (iii) someone else carrying on a business if the seller (or the seller's agent or lawyer), or a family member of the seller (or the seller'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 (if any) required under the regulations.
- (4) In this section:
  - excluded particulars*, in relation to a proposed contract for the sale of residential property, means—
    - (a) the name and address of, and contact details for, the buyer; and
    - (b) the name and address of, and contact details for, the buyer's lawyer; and
    - (c) the purchase price; and
    - (d) the date of the contract; and
    - (e) a description of any furnishings or goods to be included in the sale of the property.

## **10 Proposed contract etc to be available for inspection**

- (1) A seller of residential property commits an offence if the required documents are not all available for inspection by a prospective buyer (or an agent for a prospective buyer) at all times when an offer to buy the property may be made to the seller.

Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.

## 11 Certain conditions to be included in contract

- (1) A contract for the sale of residential property must include conditions to the following effect:
  - (a) except as disclosed in the contract—
    - (i) the property is sold free of encumbrances other than the encumbrances shown on the certificate of title; and
    - (ii) the buyer is entitled to vacant possession;
  - (b) if, before completion of the contract, the buyer becomes aware of a breach of a condition mentioned in paragraph (a), the buyer may—
    - (i) rescind the contract; or
    - (ii) complete the contract and claim damages;
  - (c) except as disclosed in the contract, there are no unapproved structures;
  - (d) if, before completion of the contract, the buyer becomes aware of an unapproved structure that is not disclosed in the contract, the buyer may rescind the contract;
  - (e) the buyer may not make any requisitions on the title to the property;
  - (f) the seller warrants that, at the date the contract is made—
    - (i) the seller will, at the time of completion, be able to complete the contract; and
    - (ii) the seller has no knowledge of any unsatisfied judgments, orders or writs affecting the property; and
    - (iii) there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the property;

- (g) the seller warrants that, at the date the contract is completed—
    - (i) the seller will be the registered proprietor of the lease (if any); and
    - (ii) there are no unsatisfied judgments, orders or writs affecting the property; and
    - (iii) there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the property;
  - (h) if, before completion of the contract, the buyer becomes aware of an error in the description of the property, the buyer may—
    - (i) if the error is material—rescind the contract, or complete the contract and claim damages; and
    - (ii) if the error is not material—complete the contract and claim damages;
  - (i) the required documents mentioned in section 9 (1) (a) to (g) for the sale form part of the contract.
- (2) However, the conditions mentioned in subsections (f) (ii) and (iii) and (g) (ii) and (iii) are not required to be included in a contract if the property is being sold—
- (a) by a mortgagee in possession of the property; or
  - (b) by a registered or official trustee, or the official receiver, under the *Bankruptcy Act 1966* (Cwlth); or
  - (c) under a court order.
- (3) If a contract for the sale of residential property is entered into and the contract does not include a condition required under subsection (1) to be included in the contract, the condition is taken to be included in the contract.

## 12 Cooling-off period

- (1) There is a cooling-off period for every contract for the sale of residential property during which the buyer may exercise the right under section 14 to give a rescission notice.
- (2) However, there is no cooling-off period for a contract for the sale of residential property if—
  - (a) the buyer 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 buyer was recorded in the bidders record at the auction as—
    - (i) a bidder; or
    - (ii) a person for whom a bidder was bidding; or
  - (e) the buyer waives the cooling-off period under section 13.
- (3) The cooling-off period begins when the contract is made and ends at 5pm on the 5th working day after the day the cooling-off period begins.
- (4) The cooling-off period may be extended or shortened—
  - (a) by a provision in the contract; or
  - (b) by 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 buyer 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 17 to that effect; and
- (c) the buyer gives a copy of the certificate to the seller.

### **13 Buyer may waive cooling-off period**

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

- (a) the buyer 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 17 to that effect; and
- (c) the buyer gives a copy of the certificate to the seller.

### **14 Right to rescind during cooling-off period**

- (1) The buyer under a contract for the sale of residential property may give the seller a written notice (a *rescission notice*) to the effect that the buyer rescinds the contract.

*Note 1* If a form is approved under s 39 for a rescission notice, the form must be used.

*Note 2* For how documents may be served, see Legislation Act, pt 19.5.

- (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 buyer or his or her 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 buyer.

**15 Consequences of rescission**

- (1) If a rescission notice is given for a contract for the sale of residential property in accordance with section 14, the contract is taken to be rescinded from the time it was entered into subject to the rights and obligations set out in subsections (2) to (7).
- (2) The buyer forfeits 0.25% of the purchase price of the property to the seller.
- (3) The amount forfeited may be recovered from any deposit paid under the contract.
- (4) If the deposit is insufficient, the balance of the amount forfeited may be recovered from the buyer as a debt.
- (5) The balance of the deposit remaining after deduction of any amount forfeited must be paid to the buyer.
- (6) An amount payable to the buyer under subsection (5) may be recovered from the seller as a debt.
- (7) The buyer and seller are not liable to pay any other amounts for damages, costs or expenses.

*Note* See the *Duties Act 1999*, s 50 (Cancelled agreement) in relation to any liability for, or refund of, duty payable on the contract.

**16 Effect on agent's right to commission**

An agent is not entitled to any commission or expenses from a seller in relation to a contract that is rescinded under—

- (a) a condition mentioned in section 11 (Certain conditions to be included in contract); or
- (b) section 14 (Right to rescind during cooling-off period).

**17 Certificate**

A certificate mentioned in section 12 (5) (Cooling-off period) or section 13 (Buyer may waive cooling-off period) complies with this section if it—

- (a) is in writing; and
- (b) is signed by a lawyer who is not—
  - (i) acting for the seller; or
  - (ii) a member or employee of a firm of which the lawyer acting for the seller is a member or employee; and
- (c) indicates whether it is given for section 12 (5) or section 13; 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 buyer—
  - (i) the nature of the certificate; and
  - (ii) the effect of giving the certificate to the seller.

**18 Buyer to reimburse seller for cost of certain reports**

On completion of a contract for the sale of residential property, the seller is entitled to reimbursement from the buyer for the cost of obtaining the following reports for the contract:

- (a) a building inspection report required under section 9 (1) (g) (iii);
- (b) a pest inspection report required under section 9 (1) (g) (vi).

**19 Compensation to buyer for false report etc**

- (1) This section applies if—
  - (a) a person buys residential property under a contract; and
  - (b) a statement or report mentioned in section 9 (1) (g) (ii), (iii), (v) or (vi) is made available to the buyer; and
  - (c) the report 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 buyer incurs loss or expense.
- (2) The person who prepared the report is liable to compensate the buyer for the loss or expense.

## Part 3 Energy efficiency ratings

### 20 Definitions for pt 3

In this part:

***energy efficiency rating*** means the energy efficiency rating contained in an energy efficiency rating statement.

***energy efficiency rating statement*** means—

- (a) a statement prepared in accordance with the energy guidelines adopted under the Territory plan; or
- (b) if the regulations make provision for energy efficiency rating statements—a statement prepared in accordance with the regulations.

***mobile home*** means a dwelling (whether or not on wheels) that can be transferred from place to place and re-erected.

***premises*** means premises that may lawfully be used for residential purposes, but does not include any of the following:

- (a) a caravan or mobile home;
- (b) a hotel or motel;
- (c) premises used for the purposes of a club;
- (d) premises on the campus of an educational institution;
- (e) a retirement village;
- (f) a nursing home or hostel for aged people or people with a disability that is conducted by an eligible organisation within the meaning of the *Aged or Disabled Persons Care Act 1954* (Cwlth) or an approved provider within the meaning of the *Aged Care Act 1997* (Cwlth);

- (g) premises in relation to which there has been given an approval within the meaning of the *Land (Planning and Environment) Act 1991*, part 6 for a development that involves the demolition of the premises;
- (h) premises in relation to which a notice directing that they be demolished has been served under the *Building Act 1972*, section 46;
- (i) premises prescribed under the regulations.

**retirement village** means a complex of residential premises (whether or not including hostel units) established mainly for occupation by people who are at least 55 years old under a scheme in which a person makes a payment (including a gift) to the authority administering the scheme to be admitted as a resident of the complex.

## 21 Industry and environment impact statement

When a regulation made for section 20, definition of **energy efficiency rating statement** is presented to the Legislative Assembly under the Legislation Act, section 64 (1), the Minister must present to the Assembly a statement describing the likely costs and benefits of the energy efficiency rating statement to the real estate and housing industries and consumers generally.

## 22 Energy efficiency rating—advertising

- (1) A person commits an offence if—
  - (a) the person publishes an advertisement for the sale of premises; and
  - (b) the advertisement does not contain a statement of the energy efficiency rating of the habitable part of the premises.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

- (3) A person commits an offence if—
- (a) the person publishes an advertisement for the sale of premises; and
  - (b) the advertisement includes a statement of the energy efficiency rating of the habitable part of the premises; and
  - (c) the statement is false or misleading.

Maximum penalty: 5 penalty units.

- (4) Subsection (3) (c) does not apply if the statement is not false or misleading in a material particular.
- (5) An offence against subsection (3) is a strict liability offence.

### **23 Energy efficiency rating statement**

- (1) Before entering into a contract for the sale of premises, the seller must give the prospective buyer—
- (a) a copy of an energy efficiency rating statement for the habitable part of the premises; or
  - (b) if—
    - (i) building work within the meaning of the *Building Act 1972* has been carried out on the premises that affects the energy efficiency rating of the habitable part of the premises; and
    - (ii) before that building work was carried out, an energy efficiency rating statement had been prepared for the habitable part of the premises;a copy of a new energy efficiency rating statement for the habitable part of the premises.
- (2) On receiving a copy of an energy efficiency rating statement under subsection (1), a prospective buyer must certify in writing that he or she has received it.

**Part 3** Energy efficiency ratings

Section 23

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- (3) If the seller fails to comply with subsection (1), the seller is liable to pay to the buyer an amount equal to 0.5% of the purchase price of the premises.
- (4) The seller is taken to have complied with subsection (1) if an energy efficiency rating statement under subsection (1) (a) or (b) and the certificate under subsection (2) form part of the contract for sale.
- (5) In this section:

*energy efficiency rating statement* means an energy efficiency rating statement that is not false or misleading in a material particular.



## Part 4                      Public auctions of residential property

### 24      Definitions for pt 4

In this part:

*bidder number*—see section 25 (2) (e).

*bidders record*—see section 25 (1).

*proof of identity* means—

- (a) an Australian driver licence; or
- (b) an Australian passport; or
- (c) another proof of identity prescribed under the regulations.

*public auction* means an auction that has been publicly advertised.

*residential property*—see section 8.

*seller*, of residential property—see section 7.

### 25      Bidders record

- (1) Before residential property is offered for sale at a public auction, the seller's agent must make a record (a *bidders record*) of the people who can bid at the auction.
- (2) The bidders record must contain the following information for each person who can bid at the auction:
  - (a) the person's name and address;
  - (b) the details prescribed under the regulations about the proof of identity for the person sighted by the agent;
  - (c) whether the person is bidding for himself or herself or for someone else;

- (d) if the person is bidding for someone else (the *principal*)—the name and address of the principal; and
  - (e) an identifying number (the *bidder number*) given to the person for the auction by the agent;
  - (f) the other information (if any) prescribed under the regulations.
- (3) The agent must keep the bidders record for 3 years.
- (4) The regulations may make provision in relation to—
- (a) entitling a seller of residential property to inspect the bidders record for the sale; and
  - (b) how a bidders record is to be made and kept.

**26 Bidder's name and address to be established by proof of identity**

- (1) An agent commits an offence if the agent—
- (a) enters a person's name and address in the bidders record for an auction as a person who is bidding for himself or herself; and
  - (b) has not sighted proof of identity for the person.

Maximum penalty: 50 penalty units.

- (2) An agent commits an offence if the agent—
- (a) enters a person's name and address in the bidders record for an auction as a person (the *principal*) for whom someone else is bidding; and
  - (b) has not sighted a written authority for the other person to bid for the principal that states the principal's name and address.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) An agent must not enter any details of a person in a bidders record if the agent knows, or is reckless about whether, the details are false.

Maximum penalty: 50 penalty units.

- (5) Subsection (3) does not apply if the details are not false in a material particular.

## **27 Confidentiality of bidders record**

- (1) An agent who makes a bidders record commits an offence if the agent—

- (a) discloses information contained in the bidders record; or
- (b) uses the bidders record, or information contained in it, for a purpose not related to the auction.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) (a) does not apply to a disclosure that is authorised or required under this Act or another Territory law.

- (3) An offence against this section is a strict liability offence.

## **28 Bids only to be taken from recorded bidders**

- (1) The auctioneer at a sale of residential property by public auction commits an offence if the auctioneer—

- (a) takes a bid from a person who is not displaying the person's bidder number for the auction; or
- (b) takes a bid from a person and does not audibly acknowledge the person's bidder number for the auction when taking the bid.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) An auctioneer who refuses to take a bid from a person because of this section does not incur a liability to anyone because of the refusal.
- (4) The taking of a bid in contravention of this section does not affect the validity of the bid (or its taking or acceptance) and the bid (and its taking or acceptance) are as valid for all purposes as if this section had not been enacted.

## **29 Dummy bidding prohibited**

- (1) A seller of residential property must not—
  - (a) make a bid at a public auction of the property; or
  - (b) arrange for someone else to make a bid for the seller at a public auction of the property.

Maximum penalty: 100 penalty units.

- (2) A person must not make a bid for the seller of residential property at a public auction of the property.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) Subsections (1) and (2) do not apply to a bid made in accordance with section 30.
- (5) For subsection (2)—
  - (a) a bid may be found to have been made for a seller even though it was not made at the request of, or with the knowledge of, the seller; and
  - (b) evidence that, in making a bid, the bidder intended to benefit the seller is evidence that the bidder made the bid for the seller.
- (6) It does not matter that a person making a bid in contravention of this section is not in the ACT or Australia when the bid is made.

**30 Permissible seller bid**

- (1) The auctioneer of residential property at a public auction may make 1 bid for the seller if—
  - (a) the conditions of the auction permit the making of the bid; and
  - (b) before bidding begins, the auctioneer orally declares at the auction that the conditions permit the making of the bid; and
  - (c) immediately before or when making the bid, the auctioneer states audibly to the bidders that the bid is being made for the seller (for example, by stating ‘seller bid’).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) It is not sufficient compliance with the requirement under subsection (1) (c) to identify a bid as a seller bid if the auctioneer only identifies the seller by name without stating that the person named is the seller.

**31 Offences by auctioneers about bids**

- (1) The auctioneer of residential property at a public auction must not accept a bid at the auction if the auctioneer knows that the bid was made by or for the seller of the property.

Maximum penalty: 100 penalty units.

- (2) The auctioneer of residential property at a public auction must not acknowledge the making of a bid at the auction if no bid was made.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

**32 Auction conditions to be available before auction begins**

- (1) The auctioneer of residential property at a public auction commits an offence if—
  - (a) the auctioneer begins the auction; and
  - (b) a copy of the conditions of the auction have not been displayed at the place of the auction for at least 30 minutes before the auction begins.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**33 Last seller bids must be identified if property passed in**

- (1) This section applies if—
  - (a) a public auction of residential property is held at which the property is not sold; and
  - (b) the last bid made before the auction stopped was a bid made by the auctioneer of the property for the seller of the property.
- (2) In marketing the residential property, the seller or an agent must not state the amount of the last bid without also stating that it was a bid made for the seller of the property.

Maximum penalty: 100 penalty units.

- (3) A person who tells someone else the amount of the last bid to enable the amount to be published must also tell the other person that the bid was made for the seller of the property.

Maximum penalty: 50 penalty units.

- (4) A publisher of property auction sales results must not publish the fact that the residential property was passed in for the amount of the last bid without also stating that the bid was made for the seller of the property.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) For subsection (2), a statement is made in marketing property if—
- (a) it is made in an advertisement about the property published by the seller or an agent; or
  - (b) it is made (whether orally or in writing) to a prospective buyer of the property.
- (7) Subsections (2) and (4) do not apply if the person making the statement or publishing the amount—
- (a) was not present at the auction; and
  - (b) relied on a statement made by a person who purported to know what happened at the auction.
- (8) It is sufficient compliance with subsections (2) and (4) if the amount is described as a ‘seller bid’.

### **34 Disruption of auction prohibited**

- (1) This section applies to—
- (a) a person intending to make a bid at a public auction of residential property; and
  - (b) a person acting for someone intending to make a bid at a public auction of residential property.
- (2) The person commits an offence if the person intentionally prevents someone else from bidding at the auction.

Maximum penalty: 50 penalty units.

## Part 5 Miscellaneous

### 35 Service on lawyer

Any document that is authorised or required under this Act to be served on a person (whether the word ‘serve’, ‘give’ or ‘tell’ or any other word is used) may be served on the person’s lawyer.

*Note* For how documents may be served, see Legislation Act, pt 19.5.

### 36 Operation of Act cannot be excluded etc

- (1) A provision of a contract for the sale of residential property, or any other agreement or arrangement, is void if it would, apart from this subsection, have the effect of excluding, changing or restricting the operation of this Act.
- (2) This Act does not affect any right or remedy available otherwise than under this Act.

### 37 Making false or misleading statements

- (1) A person commits an offence if—
  - (a) the person makes a statement in a relevant document; and
  - (b) the person does so knowing that the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.



- (4) A person commits an offence if—
- (a) the person makes a statement in a relevant document; and
  - (b) the person is reckless about whether the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading.

Maximum penalty: 50 penalty units.

- (5) Subsection (4) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (6) Subsection (4) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.

- (7) In this section:

***relevant document*** means—

- (a) an energy efficiency rating statement; or
- (b) a building inspection report; or
- (c) a pest inspection report; or
- (d) a pest treatment certificate.

### **38 Giving false or misleading documents**

- (1) A person commits an offence if—
- (a) the person gives a relevant document to someone else; and
  - (b) the person does so knowing that the relevant document—
    - (i) is false or misleading; or
    - (ii) omits anything without which the document is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (i) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the document misleading in a material particular.
- (4) Subsection (1) does not apply to a person who gives a document if the document is accompanied by a signed statement—
  - (a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.
- (5) The statement under subsection (4) must be signed by—
  - (a) the person; or
  - (b) if the person who produces the document is a corporation—by an executive officer of the corporation.
- (6) In this section:  
*relevant document*—see section 37.

### **39 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.  
*Note* For other provisions about forms, see Legislation Act, s 255.
- (3) An approved form is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.

**40 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for offences against the regulations.

## Part 6 Repeal and consequential amendments

### 41 Repeal of Energy Efficiency Ratings (Sale of Premises) Act 1997

The *Energy Efficiency Ratings (Sale of Premises) Act 1997* No 121 is repealed.

### 42 Acts amended—sch 1

The Acts mentioned in schedule 1 are amended.

## **Schedule 1      Consequential amendments**

(see s 42)

### **Part 1.1              Agents Act 2003**

#### **[1.1] New sections 89A and 89B**

*in division 5.6, insert*

#### **89A Proposed contracts for sale of residential property**

- (1) An agent commits an offence if—
- (a) the agent offers residential property for sale; and
  - (b) the required documents are not all available at the agent's place of business for inspection by a prospective buyer (or an agent for a prospective buyer) at all times when an offer to buy the property may be made to the agent.

Maximum penalty: 50 penalty units.

- (2) A salesperson commits an offence if—
- (a) the salesperson is employed by an agent who is acting for a seller of residential property; and
  - (b) the salesperson offers the residential property for sale; and
  - (c) the required documents are not all available at the agent's place of business for inspection by a prospective buyer (or an agent for a prospective buyer) at all times when an offer to buy the property may be made to the salesperson.

Maximum penalty: 50 penalty units.

- (3) An agent or salesperson *offers residential property for sale* if the agent or salesperson, expressly or by implication—
- (a) indicates that the property is for sale or is to be auctioned at any future time; or
  - (b) offers to sell the property; or
  - (c) invites an offer to buy the property; or
  - (d) indicates that someone may be willing to grant an option to buy the property.

**Examples for par (a)**

- 1 The agent or salesperson advertises or promotes the property in a way that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale.
- 2 The agent or salesperson places a sign on or near the property that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale.
- 3 The agent or salesperson advertises or in any way gives notice that the property is to be auctioned at a future time.
- 4 The agent places on display particulars or a description of, or a photograph, drawing or other representation of, the property in or on any premises, vehicle or place where the agent carries on business as a real estate agent.
- 5 The agent or salesperson shows the property to a prospective buyer or gives the address of the property to a prospective buyer.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) An offence against this section is a strict liability offence.
- (5) This section does not apply to—
- (a) anything done by an agent when acting for a prospective buyer of residential property; or
  - (b) a contract, or proposed contract, for the sale of residential property if the contract arises from the exercise of an option to buy the property and—

- (i) the option was contained in a will or sublease; or
  - (ii) the period for exercise of the option was longer than 60 days.
- (6) The regulations may prescribe exceptions to this section.
- (7) In this section:

*prospective buyer*, in relation to residential property, includes a prospective grantee of an option to buy the property.

*required documents*—see the *Civil Law (Sale of Residential Property) Act 2003*, section 9.

*residential property*—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

## **89B Contracts for sale of residential property**

- (1) An agent or salesperson may do any of the following:
- (a) insert into a proposed contract for the sale of residential property any of the following:
    - (i) the name and address of, and contact details for, the buyer;
    - (ii) the name and address of, and contact details for, the buyer's lawyer;
    - (iii) the purchase price;
    - (iv) the date of the contract;
  - (b) insert in, or delete from, a proposed contract for the sale of residential property a description of any furnishings or goods to be included in the sale of the property;
  - (c) take part in the exchange or making of contracts for the sale of residential property.

- (2) An agent or salesperson must not insert any special conditions into a proposed contract for the sale of residential property.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) If a prospective party to a proposed contract for the sale of residential property for whom an agent or salesperson acts tells the agent or salesperson, or it is apparent from the proposed contract, that a lawyer is or will be acting for the party, the agent or salesperson must not take part in the exchange or making of the contract unless expressly authorised to do so by the party or the lawyer.
- (5) A contract is not invalid only because of the failure of an agent or salesperson to comply with subsection (4).
- (6) An agent or salesperson must not charge a fee for anything authorised to be done under this section.
- (7) In this section:

*residential property*—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

## **Part 1.2**                      **Fair Trading Act 1992**

### **[1.2] Section 15A**

*omit*



## **Part 1.3                      Legal Practitioners Act 1970**

### **[1.3] New section 193 (2) (ca)**

*insert*

- (ca) for an agent or salesperson under the *Agents Act 2003* to insert details mentioned in that Act, section 89B (1) (a) or (b) into a proposed contract to which that section applies; or

### **[1.4] Section 193 (2)**

*renumber paragraphs when Act next republished under Legislation Act*

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Australian driver licence
- corporation
- domestic partner (see s 169 (1))
- lawyer.

**agent** means—

- (a) a person who holds a licence under the *Agents Act 2003* as a real estate agent; or
- (b) a person registered under that Act as a real estate salesperson.

**bidder number**, for part 4 (Public auctions of residential property)—see section 25 (2) (e).

**bidders record**—see section 25 (1).

**building conveyancing inquiry documents**, for part 2 (Sale of residential property)—see section 7.

**building inspection report**, for part 2 (Sale of residential property)—see section 7.

**class A unit**, for part 2 (Sale of residential property)—see section 7.

**class B unit**, for part 2 (Sale of residential property)—see section 7.

**encumbrance**, for part 2 (Sale of residential property)—see section 7.

**energy efficiency rating**, for part 3 (Energy efficiency ratings)—see section 20.

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***energy efficiency rating statement***, for part 3 (Energy efficiency ratings)—see section 20.

***family member***, of a person, means—

- (a) the person's domestic 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 domestic partner.

***lease***, for part 2 (Sale of residential property)—see the *Land (Planning and Environment) Act 1991*, section 159.

***lease conveyancing inquiry documents***, for part 2 (Sale of residential property)—see section 7.

***mobile home***, for part 3 (Energy efficiency ratings)—see section 20.

***pest inspection report***, for part 2 (Sale of residential property)—see section 7.

***pest treatment certificate***, for part 2 (Sale of residential property)—see section 7.

***premises***, for part 3 (Energy efficiency ratings)—see section 20.

***proof of identity***, for part 4 (Public auctions of residential property)—see section 24.

***prospective buyer***, for part 2 (Sale of residential property)—see section 7.

***public auction***, for part 4 (Public auctions of residential property)—see section 24.

**publish**—something is **published** if it is—

- (a) included in a newspaper, periodical publication or other publication; or
- (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
- (c) contained in a document given to someone or left on premises where someone lives or works; or
- (d) broadcast by radio or television; or
- (e) electronically disseminated in another way (for example by inclusion on a web site).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**related person**—see the *Duties Act 1999*, dictionary.

**required documents**, for part 2 (Sale of residential property)—see section 9.

**rescission notice**, for part 2 (Sale of residential property)—see section 7.

**residence**, for part 2 (Sale of residential property)—see section 7.

**residential property**—see section 8.

**retirement village**, for part 3 (Energy efficiency ratings)—see section 20.

**seller**, of residential property, for—

- (a) part 2 (Sale of residential property)—see section 7; and
- (b) part 4 (Public auctions of residential property)—see section 7.

*sublease*, for part 2 (Sale of residential property)—see the *Land (Planning and Environment) Act 1991*, section 159.

*unapproved structure*, for part 2 (Sale of residential property)—see section 7.

*unit*, for part 2 (Sale of residential property)—see section 7.

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## Endnotes

### Republications of amended laws

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Penalty units

- 2 The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 26 June 2003]*

I certify that the above is a true copy of the Civil Law (Sale of Residential Property) Bill 2003 which was passed by the Legislative Assembly on 28 August 2003.

Acting Clerk of the Legislative Assembly

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