



Australian Capital Territory

Civil Law (Sale of Residential Property) Regulations 2004

Subordinate Law SL2004-25

The Australian Capital Territory Executive makes the following regulations under the *Civil Law (Sale of Residential Property) Act 2003*.

Dated 30 June 2004.

JON STANHOPE
Minister

TED QUINLAN
Minister



Australian Capital Territory

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Part 1 Preliminary

1 Name of regulations

These regulations are the *Civil Law (Sale of Residential Property) Regulations 2004*.

2 Commencement

- (1) The following provisions commence on a day fixed by the Minister by written notice:
 - regulation 7 (3), (4) and (5)
 - regulation 10 (3), (4) and (5)
 - regulation 11
 - regulation 12.
- (2) The remaining provisions commence on 1 July 2004.

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

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

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

For example, the signpost definition ‘*approved plans*—see the *Building Act 2004*, dictionary.’ means that the term ‘approved plans’ is defined in that dictionary and the definition applies to these regulations.

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

4 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

5 Offences against regulations—application of Criminal Code etc

Other legislation applies to an offence against these regulations.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against these regulations (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.

6 AS 4349.1 and AS 4349.3 and Legislation Act, s 47

The Legislation Act, section 47 (6) does not apply to AS 4349.1 and AS 4349.3 under these regulations.

Part 2 Sale of residential property

7 **Building and compliance inspection report—Act, s 7, def *building and compliance inspection report***

- (1) A building and compliance inspection report must be completed in accordance with AS 4349.1.
- (2) The report must state in a prominent place the date of the inspection and the date the report was prepared.
- (3) The report must—
 - (a) state the policy number and expiry date of the professional indemnity insurance policy that covers the person who prepared the report; or
 - (b) be accompanied by a copy of a certificate of currency for the policy given by the insurer that includes the policy's expiry date.
- (4) The report must include statements to the effect that—
 - (a) within 7 days after the day the report is prepared, the following information will be given to the Territory for inclusion in a publicly available register:
 - (i) the fact that the report has been prepared;
 - (ii) the street address of the property;
 - (iii) the inspection date stated in the report;
 - (iv) the name of the person who prepared the report;
 - (v) if the person who prepared the report did so as an employee or agent of another entity—the name and contact details of the other entity; and

- (b) the person who prepared the report, or the other entity, may give a copy of it, on payment of a reasonable charge, to a person who has entered into a contract to buy the property; and
 - (c) no reliance may be placed on the report for any contract entered into more than 180 days after the date of the inspection.
- (5) The report must set out the circumstances in which reliance may be placed on the report.
- (6) For subregulation (1), AS 4349.1 is taken to be modified as follows:
- (a) in clause 3.4.1, insert the following new paragraph (e):
 - (e) The report is not required to contain an assessment of the property in relation to cosmetic or minor maintenance matters.

Examples of cosmetic or minor maintenance matters

- 1 leaking taps
- 2 exposed nail heads
- 3 peeling paint

- (b) omit clause 4.
- (7) In this regulation:

AS 4349.1 means the Australian Standard AS 4349.1-1995 (Inspections of buildings – Property inspections – Residential buildings) as in force from time to time.

Note This standard may be obtained on the internet at the web site www.standards.com.au.

building permit means a building permit issued under the *Building Act 1972*.

structure—see the *Building Act 2004*, section 8.

8 Building conveyancing inquiry documents—Act, s 7, def *building conveyancing inquiry documents*

The building conveyancing inquiry documents for a residence are—

- (a) the following documents held by the planning and land authority:
 - (i) any certificate of occupancy for the residence;
 - (ii) any survey plan for the residence signed by a registered surveyor;
 - (iii) any approved plans for the residence;
 - (iv) any sanitary drainage work plan for the residence under the *Water and Sewerage Act 2000*;
 - (v) the summary sheet of the contents of the building file for the residence; and
- (b) for any document mentioned in paragraph (a) (i) to (iv) that is not available from the planning and land authority—a written statement from the authority that the document is not available.

9 Lease conveyancing inquiry documents—Act, s 7, def *lease conveyancing inquiry documents*

- (1) The lease conveyancing inquiry documents for a property are the following statements or documents provided by the planning and land authority:
 - (a) a statement about any entry in the heritage places register in relation to the property;
 - (b) a statement about whether any rent under the *Land (Planning and Environment) Act 1991* for the lease of the property is owing;

- (c) a statement about any applications for approval to undertake a development under the *Land (Planning and Environment) Act 1991* affecting the property;
- (d) a statement about any contravention of the *Land (Planning and Environment) Act 1991* in relation to the lease of the property;
- (e) a statement about any order under the *Land (Planning and Environment) Act 1991* made or under consideration by the planning and land authority in relation to the property;
- (f) a statement about any applications for dual occupancy made under the Territory plan affecting the property;
- (g) a statement about any certificate of compliance issued under the *Land (Planning and Environment) Act 1991*;
- (h) a statement about whether there is any record about contaminated land on the property.

(2) In this regulation:

heritage places register—see the *Land (Planning and Environment) Act 1991*, dictionary.

10 Pest inspection report—Act, s 7, def pest inspection report

- (1) A pest inspection report must be completed in accordance with AS 4349.3.
- (2) The report must state in a prominent place the date of the inspection and the date the report was prepared.
- (3) The report must—
 - (a) state the policy number and expiry date of the professional indemnity insurance policy that covers the person who prepared the report; or

- (b) be accompanied by a copy of a certificate of currency for the policy given by the insurer that includes the policy's expiry date.
- (4) The report must include statements to the effect that—
- (a) within 7 days after the day the report is prepared, the following information will be given to the Territory for inclusion in a publicly available register:
 - (i) the fact that the report has been prepared;
 - (ii) the street address of the property;
 - (iii) the inspection date stated in the report;
 - (iv) the name of the person who prepared the report;
 - (v) if the person who prepared the report did so as an employee or agent of another entity—the name and contact details of the other entity; and
 - (b) the person who prepared the report, or the other entity, may give a copy of it, on payment of a reasonable charge, to a person who has entered into a contract to buy the property; and
 - (c) no reliance may be placed on the report for any contract entered into more than 180 days after the date of the inspection.
- (5) The report must set out the circumstances in which reliance may be placed on the report.
- (6) In this regulation:

AS 4349.3 means the Australian Standard AS 4349.3-1998 (Inspection of buildings – Timber pest inspections) as in force from time to time.

Note This standard may be obtained on the internet at the web site www.standards.com.au.

11 Requirement for professional indemnity insurance—Act, s 9 (3) (b)

- (1) A report mentioned in the Act, section 9 (1) (g) (iii) or (vi) must have been prepared by someone who has professional indemnity insurance that relates to the subject matter of the report.
- (2) The professional indemnity insurance must provide a minimum limit of indemnity of—
 - (a) \$500 000; or
 - (b) if another amount is determined, in writing, by the Minister— that amount.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

12 Building and pest inspection information register

- (1) The chief executive must keep a register of information about building and compliance inspection reports and pest inspection reports.
- (2) The register must include—
 - (a) the information about building and compliance inspection reports given to the Territory as mentioned in regulation 7 (4) (a); and
 - (b) the information about pest inspection reports given to the Territory as mentioned in regulation 10 (4) (a).
- (3) However, it is only necessary to include information about a particular inspection for 1 year after the date of the inspection.
- (4) The register may also include any other information the chief executive considers appropriate.

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- (5) The register may be kept in a form the chief executive considers appropriate.
- (6) The chief executive must make the information in the register publicly available in the way the chief executive considers appropriate.

Part 3 Public auctions of residential property

13 **Proof of identity—Act, s 24, def *proof of identity*, paragraph (c)**

The following proofs of identity are prescribed:

- (a) a card or document that shows the name and address of the person and is issued by—
 - (i) the Territory, or a Territory authority; or
 - (ii) the government or a statutory authority of the Commonwealth or a State; or
 - (iii) an authorised deposit-taking institution.

Examples for par (a)

- 1 a rates notice issued by the Territory or another jurisdiction
- 2 a bank statement
- 3 a tax assessment notice

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).

- (b) a foreign passport or a foreign driver licence that shows the person's name, together with a card or document issued by an entity other than the person concerned that shows the person's name and address.

14 Bidders record—Act, s 25

- (1) The bidders record for an auction of residential property must be written in English and must record the following information:
 - (a) the date and place of the auction;
 - (b) the address of the property;
 - (c) the name of the seller of the property;
 - (d) the name and licence number of the seller's agent for the auction;
 - (e) the name and licence number of the auctioneer conducting the auction;
 - (f) the licence number of any buyer's agent given a bidder number for the auction;
 - (g) if the property is sold at the auction—the name of the successful bidder and the sale price;
 - (h) if the property is not sold at the auction—the highest bid accepted, other than a seller bid made in accordance with the Act, section 30.
- (2) The bidders record may be kept in an electronic form.
- (3) In this regulation:

licence means a licence under the *Agents Act 2003*.

15 Entries in bidders record to be made by seller's agent or employee of the agent

- (1) A person commits an offence if—
- (a) the person makes an entry in a bidders record; and
 - (b) the person is not—
 - (i) an agent of the seller; or
 - (ii) an employee of an agent of the seller acting on behalf of the agent.

Maximum penalty: 10 penalty units.

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

16 Standard conditions for conduct of public auctions—Act, s 31A

The standard conditions for conduct of public auctions are set out in schedule 1.

Part 4 Transitional

17 References to *Building Act 2004*

- (1) A reference in these regulations to the *Building Act 2004* includes a reference to the *Building Act 1972*.
- (2) A reference in these regulations to a provision of the *Building Act 2004* includes a reference to the corresponding provision of the *Building Act 1972*.
- (3) This regulation expires on the day the *Building Act 2004* commences.

18 Reports prepared before 1 July 2004

- (1) A building and compliance inspection report prepared before 1 July 2004 is a ***building and compliance inspection report*** for the Act, part 2 whether or not it complies with regulation 7.
- (2) A pest inspection report prepared before 1 July 2004 is a ***pest inspection report*** for the Act, part 2 whether or not it complies with regulation 10.
- (3) This regulation expires on 30 June 2005.

19 Reports prepared before commencement of insurance requirements

- (1) Regulation 7 (3), (4) and (5) and regulation 11 do not apply to a building and compliance inspection report prepared before the commencement of those regulations.
- (2) Regulation 10 (3), (4) and (5) and regulation 11 do not apply to a pest inspection report prepared before the commencement of those regulations.
- (3) This regulation expires on 30 June 2006.

Schedule 1 Standard conditions for conduct of public auctions of residential property

(see reg 16)

- *1 No bids may be made for the seller of the property.
- OR
- *1 The auctioneer may make 1 bid for the seller of the property at any time during the auction.
[One of these alternatives must be deleted]*
 - 2 Each person bidding must be entered on the bidders record.
 - 3 The auctioneer may refuse any bid.
 - 4 The auctioneer may decide the amount by which the bidding is to be advanced.
 - 5 The auctioneer may withdraw the property from sale at any time.
 - 6 The auctioneer may refer a bid to the seller at any time before the end of the auction.
 - 7 If there is a dispute about a bid, the auctioneer may resubmit the property for sale at the last undisputed bid or start the bidding again.
 - 8 If there is a dispute about a bid, the auctioneer is the sole arbiter and the auctioneer's decision is final.
 - 9 The sale is subject to a reserve price unless the auctioneer announces otherwise.
 - 10 The highest recorded bidder will be the buyer, subject to any reserve price.

- 11 If a reserve price has been set for the property and the property is passed in below the reserve price, the seller must first negotiate with the highest bidder for the purchase of the property.
- 12 The buyer must sign the contract and pay the deposit immediately after the fall of the hammer.

Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to these regulations.

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

- authorised deposit-taking institution
- planning and land authority
- registered surveyor.

Note 3 Terms used in these regulations have the same meaning that they have in the *Civil Law (Sale of Residential Property) Act 2003* (see Legislation Act, s 148). For example, the following terms are defined in the *Civil Law (Sale of Residential Property) Act 2003*, dict:

- agent
- bidders record
- lease
- residential property
- seller.

approved plans—see the *Building Act 2004*, dictionary.

certificate of occupancy—see the *Building Act 2004*, dictionary.

foreign driver licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

Endnotes

1 Notification

Notified under the Legislation Act on 30 June 2004.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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