



Australian Capital Territory

Civil Law (Sale of Residential Property) Regulation 2004

SL2004-25

made under the

Civil Law (Sale of Residential Property) Act 2003

Republication No 11

Effective: 27 August 2008 – 30 June 2011

Republication date: 27 August 2008

Last amendment made by A2008-29

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Civil Law (Sale of Residential Property) Regulation 2004*, made under the *Civil Law (Sale of Residential Property) Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 27 August 2008. It also includes any amendment, repeal or expiry affecting the republished law to 27 August 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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R11
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Part 1 Preliminary

1 Name of regulation

This regulation is the *Civil Law (Sale of Residential Property) Regulation 2004*.

3 Dictionary

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

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, 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 this regulation.

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

4 Notes

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

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

5 **Offences against regulation—application of Criminal Code etc**

Other legislation applies to an offence against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (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 this regulation.

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) The report must include the following documents or statements about any structure erected on the property:
- (a) a copy of any approved plans for the structure;
 - (b) a copy of any building approval for the structure that does not form part of approved plans included in the report under paragraph (a);
 - (c) a copy of any building permit for the structure;
 - (d) a copy of any certificate of occupancy that has been given for the structure;
 - (e) a statement from the person who prepared the report about whether the person believes the structure substantially complies with any approved plans for the structure;
 - (f) a statement from the person who prepared the report about whether the person believes any building approval is required for the structure;
 - (g) if the person who prepared the report believes that a building approval is not required for the structure—a statement from the person about whether the person believes development approval is required for the structure under the *Planning and Development Act 2007*, chapter 7 (Development approvals).

- (7) For subsection (1), AS 4349.1 is taken to be modified as follows:
- (a) omit section 2 (Inspection agreement);
 - (b) in clause C4.2 (Report content commentary), insert the following new paragraph (e):
 - (e) 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
 - (c) omit clause 4.2.4.2 (Minor defects);
 - (d) omit clause C4.2.4.2 (Minor defects commentary);
 - (e) in clause 4.2.8 (Conclusion), omit the following words:

and an opinion regarding the incidence of minor defects, relative to the average condition of similar buildings of approximately the same age that have been reasonably well maintained.
 - (f) omit clause C4.2.8 (Conclusion commentary).

- (8) In this section:

AS 4349.1 means Australian Standard 4349.1 (*Inspection of buildings – Pre-purchase inspections – Residential buildings*), as in force from time to time.

Note This standard is accessible at www.standards.org.au.

building approval means a building approval under the *Building Act 2004*.

building permit means a building permit issued under the *Building Act 2004*.

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*

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 register in relation to the property;
- (b) a statement about whether any rent under the *Planning and Development Act 2007* for the lease of the property is owing;
- (c) a statement about any application for development approval under the *Planning and Development Act 2007* affecting the property;

- (d) a statement about any contravention of the *Planning and Development Act 2007* in relation to the lease of the property;
- (e) a statement about any order under the *Planning and Development Act 2007* made or proposed to be made by the planning and land authority in relation to the property;
- (f) a statement about any application for development approval for variation of a lease for dual occupancy made under the *Planning and Development Act 2007* affecting the property;
- (g) a statement about any certificate of compliance issued under the *Planning and Development Act 2007*;
- (h) a statement about whether there is any record of contaminated land on the property.

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 section:

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

Note This standard is accessible at www.standards.org.au.

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

- (1) A report mentioned in the Act, section 9 (1) (h) (iii) or (iv) 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 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 section 7 (4) (a); and
 - (b) the information about pest inspection reports given to the Territory as mentioned in section 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.
- (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 regulation, 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 section:

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.

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

(see s 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 s 3)

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

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

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

Note 3 Terms used in this regulation 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 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This regulation was originally the *Civil Law (Sale of Residential Property) Regulations 2004*. It was renamed under the *Legislation Act 2001*.

Civil Law (Sale of Residential Property) Regulation 2004 SL2004-25

notified LR 30 June 2004

s 1, s 2 commenced 30 June 2004 (LA s 75 (1))

s 7 (3), s 7 (5), s 10 (3), s 10 (5), s 11 commenced 1 October 2004 (s 2 (1) and CN2004-24)

s 7 (4), s 10 (4), s 12 commenced 4 April 2005 (s 2 as am by SL2004-64)

remainder commenced 1 July 2004 (s 2 (2))

as amended by

Civil Law (Sale of Residential Property) Amendment Regulations 2004 (No 1) SL2004-48

notified LR 9 September 2004

s 1, s 2 commenced 9 September 2004 (LA s 75 (1))

remainder commenced 1 October 2004 (s 2)

Civil Law (Sale of Residential Property) Amendment Regulation 2004 (No 2) SL2004-64

notified LR 23 December 2004

s 1, s 2 commenced 23 December 2004 (LA s 75 (1))

remainder commenced 24 December 2004 (s 2)

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.5

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.5 commenced 16 November 2006 (s 2 (1))

Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.6

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.6 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

**Justice and Community Safety Legislation Amendment
Act 2008 (No 3) A2008-29 sch 1 pt 1.3**

notified LR 13 August 2008

s 1, s 2 commenced 13 August 2008 (LA s 75 (1))

sch 1 pt 1.3 commenced 27 August 2008 (s 2)

4 Amendment history

Name of regulation

s 1 am R4 LA

Commencement

s 2 sub SL2004-64 s 4
om LA s 89 (4)

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

s 7 am SL2004-48 s 4, s 5; regs renum R3 LA (see SL2004-48 s 6); A2007-25 amdt 1.30; A2008-29 amdt 1.7, amdt 1.8

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

s 9 am A2006-42 amdt 3.12, amdt 3.13
sub A2007-25 amdt 1.31

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

s 10 am A2008-28 amdt 1.9

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

s 11 am A2006-42 amdt 3.14

References to *Building Act 2004*

s 17 exp 1 September 2004 (s 17 (3))

Reports prepared before 1 July 2004

s 18 exp 30 June 2005 (s 18 (3))

Transitional

pt 4 hdg om R8 LA

Reports prepared before commencement of insurance requirements

s 19 exp 30 June 2006 (s 19 (3))

Reports prepared before commencement of requirements about structures

s 20 ins SL2004-48 s 7
exp 30 June 2006 (s 20 (2))

Dictionary

dict am A2006-42 amdt 3.15

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2004	1 July 2004– 1 Sep 2004	not amended	new regulation
R2 2 Sept 2004	2 Sept 2004– 30 Sept 2004	not amended	commenced expiry
R3 1 Oct 2004	1 Oct 2004– 1 Nov 2004	SL2004-48	commenced provisions and amendments by SL2004-48
R4 2 Nov 2004	2 Nov 2004– 23 Dec 2004	SL2004-48	editorial amendments under Legislation Act
R5 24 Dec 2004	24 Dec 2004– 3 Apr 2005	SL2004-64	amendments by SL2004-64
R6 4 Apr 2005	4 Apr 2005– 30 June 2005	SL2004-64	commenced provisions
R7 1 July 2005	1 July 2005– 30 June 2006	SL2004-64	commenced expiry
R8 1 July 2006	1 July 2006– 15 Nov 2006	SL2004-64	commenced expiry
R9 16 Nov 2006	16 Nov 2006– 30 Mar 2008	A2006-42	amendments by A2006-42
R10 31 Mar 2008	31 Mar 2008– 26 Aug 2008	A2007-25	amendments by A2007-25

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