

Serial
Sale of Land (Rights and Duties of Parties) Bill 2009
Ms Lawrie

A Bill for an Act about rights and duties relating to the sale of land

DISCUSSION DRAFT ONLY
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NORTHERN TERRITORY OF AUSTRALIA
SALE OF LAND (RIGHTS AND DUTIES OF PARTIES) ACT 2009 –
DISCUSSION DRAFT

Act No. [] of 2009

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2009

DISCUSSION DRAFT about rights and duties relating to the sale of land

[Assented to [] 2009]
[Second reading [] 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Introduction

Division 1 Preliminary matters

1 Short title

This Act may be cited as the *Sale of Land (Rights and Duties of Parties) Act 2009*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

Division 2 Interpretation

3 Definitions

In this Act:

conveyancing agent means a conveyancing agent as defined in section 5(2)(c) of the *Agents Licensing Act*.

disclosure documents, for land, see section 4.

encumbrance includes a lease and a tenancy agreement.

excluded particulars, for a proposed contract for the sale of land, means the following particulars:

- (a) the name and address of, and contact details for, the purchaser;
- (b) the name and address of, and contact details for, the purchaser's legal practitioner or conveyancing agent;
- (c) the amount of the purchase price and any deposit payable;
- (d) the date of the contract;
- (e) other particulars prescribed by regulation.

family member, of a person, means:

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

land means a lot, and includes a registered interest in a lot.

lot, see section 4 of the *Land Title Act*.

misleading means misleading in a material particular or because of the omission of a material particular.

offer, land for sale, see section 5.

prospective purchaser, of land, includes a prospective grantee of an option to purchase the land.

real estate agent means:

- (a) a licensed real estate agent under the *Agents Licensing Act*; or
- (b) a registered agents representative of a licensed real estate agent under that Act.

registered means registered in the land register under the *Land Title Act*.

required certificate, see section 4(1)(g).

required report, see section 4(1)(f).

rescission notice, see section 13(3), 15(2) or 19(1).

residential property means:

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

statutory easement or covenant means an easement or covenant:

- (a) created on the registration of a plan of survey mentioned in section 64 of the *Planning Act* or in another way under an Act; or
- (b) reserved under the *Crown Lands Act*.

unapproved structure means a structure for which a building permit and occupancy permit are required under the *Building Act*, but have not been obtained.

vendor, of land, includes:

- (a) a prospective vendor of the land; and
- (b) a prospective grantor of an option to sell the land.

working day means a day other than:

- (a) a Saturday or Sunday; or
- (b) a public holiday.

4 Disclosure documents

- (1) The **disclosure documents** for land are a copy of each of the following documents:
 - (a) the proposed contract for the sale of the land other than the excluded particulars;
 - (b) the certificate as to title under the *Land Title Act* for the land;
 - (c) a registered encumbrance affecting the land other than a mortgage or a statutory easement or covenant;
 - (d) an unregistered encumbrance affecting the land;

- (e) for a unit or lot under the *Unit Titles Act*, *Unit Title Schemes Act* or *Cullen Bay Marina Act* – a plan, scheme or other document registered under that or another Act in relation to the unit or lot;
 - (f) a report required by regulation (a **required report**);
 - (g) a certificate required by regulation (a **required certificate**);
 - (h) another document required by regulation.
- (2) However, a document containing only information included in a disclosure statement under section 45 of the *Unit Title Schemes Act* is not a disclosure document.
- (3) A required report or required certificate must be prepared by a person:
- (a) prescribed by regulation; and
 - (b) who has the professional indemnity insurance required by regulation.
- (4) If the vendor has obtained 2 or more required reports or required certificates, each report or certificate is a disclosure document for subsection (1).
- (5) The Chief Executive Officer may approve a form for a disclosure document for land by publishing notice of the approval:
- (a) in the *Gazette*; or
 - (b) on the website of the Agency administering this Act.
- (6) The regulations may specify a period a document remains valid for use as a disclosure document after it is created.

5 When land is offered for sale

A person offers land for sale if the person:

- (a) advertises the land is for sale or is to be auctioned at a future time; or
- (b) offers to sell the land; or
- (c) invites an offer to purchase the land; or
- (d) offers to grant an option to purchase the land; or
- (e) invites an offer to take an option to purchase the land.

6 Declared offences for Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Division 3 Application of Act

7 Act applies to all sales of land unless excluded by regulation

- (1) This Act applies to the sale of all land in the Territory.

Notes for subsection (1)

1 Part 3 applies only to contracts, or proposed contracts, for the sale of residential property.

*2 The definition of **land** in section 3 includes a registered interest in a lot.*

- (2) However, a regulation may exclude land from the application of this Act.

8 Contracts excluded from application of Act

- (1) This Act does not apply to a contract, or proposed contract, for the sale of land if:

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

- (2) For this section, the following persons are related:

- (a) individuals who are spouses of each other, or who are parent and child;
- (b) related corporations under section 50 of the Corporations Act 2001 (a **related corporation**);
- (c) trustees of the same trust, or of different trusts if there is a beneficiary common to both trusts;

- (d) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
- (e) an individual and a trustee of a trust of which the individual is a beneficiary;
- (f) a corporation and a trustee of a trust of which:
 - (i) the corporation, or a majority shareholder, director or secretary of the corporation, is a beneficiary; or
 - (ii) a related corporation is a beneficiary;
- (g) persons who acquire interests in a corporation as a result of acquisitions that together form or arise from substantially 1 transaction or 1 series of transactions.

9 Conditions of contract

- (1) A provision in a contract for the sale of land that purports to exclude or change the operation of this Act has no effect.
- (2) This Act does not prevent a contract for the sale of land containing conditions agreed by the vendor and purchaser after the vendor offered the land for sale.

10 Act does not affect other rights and remedies

This Act does not affect any right or remedy available otherwise than under this Act.

Note for section 10

Part 6, Divisions 3 and 4, of the Law of Property Act contain provisions about contracts for the sale of land.

11 Act binds Crown

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.

Part 2 Disclosure of information by vendors of land

12 Disclosure documents to be available for inspection

A person must not offer land for sale without the disclosure

documents for the land being available for inspection by a prospective purchaser.

Fault elements:

The person:

- (a) intentionally offers the land for sale; and
- (b) knows the documents are not available for inspection or is reckless as to whether they are available for inspection.

Maximum penalty: 100 penalty units.

13 Right to rescind contract if disclosure documents not available

- (1) This section applies if:
 - (a) a vendor enters into a contract for the sale of land; and
 - (b) the disclosure documents for the land are not made available for inspection by the purchaser; and
 - (c) on written notice given by the purchaser, the vendor does not remedy the failure before the earlier of the following:
 - (i) 2 working days after the notice is given;
 - (ii) the day for completion of the contract.
- (2) The purchaser may, at any time before completion of the contract, rescind the contract.
- (3) The purchaser rescinds the contract by giving written notice (a **rescission notice**) stating the purchaser is rescinding the contract.
- (4) The amount of a deposit paid under the contract must be paid to the purchaser and may be recovered as a debt.
- (5) The purchaser is not liable to pay an amount for damages for rescission of the contract.
- (6) Also, the purchaser is not liable to pay an amount for costs or expenses relating to the rescission other than costs or expenses incurred by the purchaser if the purchaser entered into possession before the day for completion of the contract.

- (7) A real estate agent is not entitled to any commission or expenses from the vendor in relation to the contract.

14 Variation of disclosure documents

- (1) This section applies if:
- (a) disclosure documents for land are made available to a purchaser for inspection under the contract for the sale of the land; and
 - (b) because of a change in circumstances, information in the documents is no longer correct in a material particular; and
 - (c) the change happened:
 - (i) after the documents were made available to the purchaser and before the purchaser signed the contract; or
 - (ii) after the purchaser signed the contract and before completion of the contract; and
 - (d) the change did not happen because of something done by the purchaser.
- (2) The vendor must give the purchaser written notice of the details of the change before the earlier of the following:
- (a) within 5 working days after the change;
 - (b) the day for completion of the contract.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

15 Certain conditions implied in contract

- (1) A contract for the sale of land is subject to the following conditions regardless of whether they are stated in the contract:
- (a) except as disclosed in the disclosure documents for the land:
 - (i) the land is sold free of encumbrances; and
 - (ii) the purchaser is entitled to vacant possession;
 - (b) the information in the disclosure documents for the land is correct;

- (c) if, before completion of the contract, the purchaser becomes aware of a breach of a condition mentioned in paragraph (a) or (b), the purchaser may:
 - (i) rescind the contract; or
 - (ii) complete the contract and claim damages;
 - (d) except as disclosed in the contract, there are no unapproved structures on the land;
 - (e) if, before completion of the contract, the purchaser becomes aware of an unapproved structure on the land that is not disclosed in the contract, the purchaser may rescind the contract.
- (2) The purchaser rescinds the contract under subsection (1) by giving written notice (the **rescission notice**) stating the purchaser is rescinding the contract.
- (3) On giving the rescission notice:
- (a) the amount of a deposit paid under the contract must be paid to the purchaser and may be recovered as a debt; and
 - (b) the purchaser is not liable to pay an amount for damages for rescission of the contract; and
 - (c) the purchaser is not liable to pay an amount for costs or expenses relating to the rescission other than costs or expenses incurred by the purchaser if the purchaser entered into possession before the day for completion of the contract.

Part 3 Cooling-off period for contracts for sale of residential property

16 Application of Part

This Part applies only to a contract, or proposed contract, for the sale of residential property.

17 Cooling-off period

- (1) There is a cooling-off period for a contract for the sale of residential property during which the purchaser may exercise the right under section 19 to rescind the contract.
- (2) However, there is no cooling-off period for a contract for the sale of residential property if:

- (a) the property is sold by tender; or
 - (b) the property is sold by auction; or
 - (c) the contract is made on the same day as the property was offered for sale by auction but passed in and the purchaser was a bidder at the auction; or
 - (d) under section 18, the purchaser waives the cooling-off period.
- (3) The cooling-off period starts when the contract is made and ends at 5 pm on the 4th working day after the day the cooling-off period starts.

Examples for subsection (3)

- 1 *If a contract is made on Friday, the cooling-off period ends at 5 pm on the following Thursday.*
- 2 *If a contract is made on Monday, the cooling-off period ends at 5 pm on the following Friday.*

- (4) The cooling-off period may be extended or shortened by:
- (a) a provision in the contract; or
 - (b) a separate written agreement between the parties before, at or after the time the contract is made (but before the end of the cooling-off period).
- (5) However, a provision or agreement shortening the cooling-off period does not take effect until:
- (a) the purchaser receives advice from a legal practitioner or conveyancing agent in relation to the shortening of the cooling-off period; and
 - (b) the legal practitioner or conveyancing agent signs a certificate that complies with section 21 to that effect; and
 - (c) the purchaser gives a copy of the certificate to the vendor.

18 Purchaser may waive cooling-off period

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

- (a) the purchaser receives advice from a legal practitioner or conveyancing agent in relation to the effect of the cooling-off period; and

- (b) the legal practitioner or conveyancing agent signs a certificate that complies with section 21 to that effect; and
- (c) the purchaser gives a copy of the certificate to the vendor.

19 Right to rescind during cooling-off period

- (1) The purchaser under a contract for the sale of residential property may rescind the contract by giving the vendor a written notice (a **rescission notice**) stating the purchaser is rescinding the contract.
- (2) The rescission notice may only be given during the cooling-off period and is ineffective if given after completion of the contract.

20 Consequences of rescission

- (1) This section applies if a rescission notice is given for a contract for the sale of residential property under section 19.
- (2) The contract is taken to be rescinded from the time it was made.
- (3) The amount of the deposit paid under the contract must be paid to the purchaser and may be recovered as a debt.
- (4) The purchaser is not liable to pay an amount for damages for rescission of the contract.
- (5) Also, the purchaser is not liable to pay an amount for costs or expenses relating to the rescission other than costs or expenses incurred by the purchaser if the purchaser entered into possession before the day for completion of the contract.
- (6) A real estate agent is not entitled to any commission or expenses from the vendor in relation to the contract.

21 Certificate of legal practitioner or conveyancing agent

A certificate mentioned in section 17(5)(b) or 18(b) complies with this section if it:

- (a) is in writing; and
- (b) is signed by a legal practitioner or conveyancing agent who is not:
 - (i) acting for the vendor; or
 - (ii) a member or employee of a firm of which the legal practitioner or conveyancing agent acting for the vendor is a member or employee; and

- (c) states it is given for section 17(5)(b) or 18(b); and
- (d) states the names of the parties to the contract and details of the residential property the subject of the contract; and
- (e) contains a statement to the effect that the legal practitioner or conveyancing agent explained to the purchaser:
 - (i) the nature of the certificate; and
 - (ii) the effect of giving the certificate to the vendor.

Part 4 Miscellaneous matters

22 Making misleading statement in report or certificate

A person must not make a misleading statement in a required report or required certificate.

Fault elements:

The person:

- (a) knows the statement is made in a required report or required certificate; and
- (b) knows the statement is misleading or is reckless as to whether it is misleading.

Maximum penalty: 100 penalty units.

23 Giving misleading report or certificate

- (1) A person must not give a misleading document that is a required report or required certificate to someone else (the **receiver**).

Fault elements:

The person:

- (a) knows the document is a required report or required certificate; and
- (b) knows the document is misleading or is reckless as to whether it is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the person, when giving the document to the receiver:

- (a) draws the misleading aspect of the document to the receiver's attention; and
- (b) to the extent the person can reasonably do so, gives the receiver the information necessary to remedy the misleading aspect of the document.

24 Compensation for misleading report or certificate

- (1) This section applies if:
 - (a) a person purchases land under a contract; and
 - (b) a required report or required certificate for the land is made available to the purchaser; and
 - (c) the report or certificate is misleading in a material particular or is otherwise prepared without the exercise of reasonable skill and care; and
 - (d) because of that, the purchaser incurs loss or expense.
- (2) The person who prepared the report or certificate is liable to compensate the purchaser for the loss or expense.

25 Time for starting prosecution

A prosecution for an offence against this Act may be started within 2 years after the alleged commission of the offence.

26 Rescission notice

- (1) A rescission notice must:
 - (a) be signed by the purchaser or purchaser's legal practitioner or conveyancing agent; and
 - (b) be given to the vendor or vendor's legal practitioner or conveyancing agent.
- (2) If the question whether a rescission notice has been given arises in a legal proceeding, the burden of proving the giving of the notice is on the purchaser.

27 Regulations

The Administrator may make regulations under this Act.

Part 5 Transitional matters

28 Definition

In this Part:

commencement date means the date this Part commences.

29 Act does not apply to existing contract

This Act does not apply to a contract for the sale of land made before the commencement date.

30 Application of Act to land listed or advertised before commencement

- (1) This Act does not apply to a contract for the sale of land made after the commencement date if, within 6 months before the commencement date, the land:
 - (a) was listed for sale under an agreement with a real estate agent; or
 - (b) was advertised for sale by the vendor.
- (2) However, this Act applies to the sale of the land if a contract for the sale of the land is not made within 6 months after the commencement date.
- (3) Also, this Act applies to the sale of land that:
 - (a) was listed for sale under an agreement with a real estate agent before the commencement date and after the commencement date is listed for sale under an agreement with another real estate agent; or
 - (b) was advertised for sale by the vendor before the commencement date and after the commencement date is listed for sale by a real estate agent.