

SELLING A PROPERTY WITH A POOL FOR BUYERS, SELLERS AND REAL ESTATE AGENTS

EFFECTIVE MAY 2021

Compliance period

Swimming pools should be fun, but safety should be a priority. Before the pool safety laws were introduced, drowning was one of the leading causes of death in Queensland for children aged under 5.

Supervising young children and teaching them to swim at a young age can save lives. Effective pool fencing also helps keep young children safe.

Queensland's pool safety laws apply to pools on properties with houses, townhouses, units, hotels, motels, backpacker hostels, home stay accommodation and caravan parks (class 1–4 buildings).

Types of pools

Non-shared pools

If a pool is only accessible to residents of one dwelling, such as a private house, or a private spa on a unit balcony, it is a non-shared pool.

Shared pools

If residents of two or more dwellings can use the pool (e.g. in a residential unit complex) it is a shared pool.

Spas and portable pools

Pool safety laws cover spas and portable pools capable of being filled to a depth of 300 millimetres or more of water. They don't cover portable wading pools that are 300mm deep if they have a volume of no more than 2,000 litres and no filtration system.

Bathroom spas that are used as baths and emptied after use are not included.

From 1 December 2015, every pool owner has been responsible for ensuring that their pool complies with the pool safety standard.

A pool safety certificate, which certifies that the pool barrier complies with the pool safety standard, is only required when selling or leasing a property.

Contracts of sale

Before entering into a contract

If no pool safety certificate is in effect before entering into a contract of sale for a property with a pool, the seller must give the prospective buyer a Form 36 – Notice of no pool safety certificate.

A Form 36 advises that there is no pool safety certificate in effect. The Form 36 is intended to help prospective buyers make a more informed decision about purchasing the property.

Before settlement

If a pool safety certificate is in effect, the seller must give the buyer a copy of the certificate before settlement.

If a pool safety certificate is not in effect before settlement, the seller must give the buyer a Form 36 with the settlement date on the form.

A copy of the Form 36 must also be sent to the Queensland Building and Construction Commission (QBCC). For shared pools, a copy must also be given to the body corporate.

After settlement

For non-shared pools, if a certificate is not in effect before settlement, the buyer has 90 days from settlement to obtain a pool safety certificate.

For shared pools, if a pool safety certificate is not in effect before settlement, the pool owner (usually the body corporate) has 90 days from settlement to obtain a pool safety certificate.

What happens if a property is being sold at auction?

If a property with a pool is being sold at auction and no pool safety certificate is in effect, the owner or their agent (e.g. auctioneer, real estate agent etc.) must give prospective buyers a copy of the Form 36 before entering into a contract of sale.

Pool safety certificates

How do I get a pool safety certificate?

Only a pool safety inspector – licensed by QBCC – can issue a pool safety certificate. If you need to find a licensed pool safety inspector or check the inspector's licence, visit the pool safety register.

The register includes inspector contact details and the local government areas where they work.

You can also use the pool safety register to check if a pool safety certificate is in effect for a pool.

Search the register by property address or lot/plan number.

For recently built pools, a Form 17 – Final inspection certificate or Form 11 – Certificate of classification, given by the building certifier, can be used as a pool safety certificate for 1 year from its date of issue for a shared pool, and 2 years for a non-shared pool.

A Form 17 may also be given by a building certifier – and used instead of a pool safety certificate – where a barrier for an existing pool is replaced or sufficiently altered and inspected by a building certifier. A pool safety inspector or a building certifier may inspect a pool barrier, while a building certifier is only required if a building development approval was mandatory for that particular structure.

Does the pool safety certificate need to be displayed?

A pool safety certificate for a shared pool must be displayed at the main entrance to the premises, or at a gate or door accessing the pool. The owner of a non-shared pool does not need to display their pool safety certificate.

Is a new pool safety certificate required before each sale?

No. A pool safety certificate is valid for 1 year for a shared pool and 2 years for a non-shared pool regardless of how many times the property is re-sold during this period.

Where there is a shared pool, does every unit owner need to have the pool inspected separately?

No. The owner of the shared pool, usually the body corporate, needs to obtain the certificate and make it available to unit owners.

Non-compliance

What happens if the pool doesn't comply at inspection?

If a pool safety inspector is not satisfied that a pool complies, they must issue a Form 26 – Pool safety non-conformity notice. A Form 26 advises the pool owner how their pool does not comply, and details the work needed to make it comply.

Note: if the sale (or lease) of a property triggers a 90-day period in which to gain a certificate, issuing a Form 26 does not change or extend the date by when a pool safety certificate has to be obtained.

Some pool safety inspectors are licensed to carry out certain minor repairs. Pool owners can also carry out some repair and maintenance work.

The *Building Regulation 2006* sets out the repairs and maintenance work that pool owners can carry out themselves, and minor repairs that appropriately licensed pool safety inspectors can carry out. See the “Tips to make your pool safer” fact sheet.

If the pool owner needs to have their pool re-inspected within 3 months of a Form 26 being issued, they must re-engage the original inspector. It is an offence for the pool owner to ask a different

inspector to re-inspect the pool within this period without written approval from QBCC.

In some circumstances (e.g. if the inspector becomes ill), the pool owner can apply to QBCC for another inspector to re-inspect the pool within the 3-month period.

If the original inspector (who issued the Form 26) does not receive a request from the pool owner to re-inspect the pool within 3 months, the inspector must notify the local government. The local government can then take any necessary enforcement action to ensure the pool complies with the relevant standard.

If a pool owner disagrees with a Form 26, they may appeal to a Building and Development Dispute Resolution Committee established under the *Sustainable Planning Act 2009*.

What are the penalties for non-compliance?

Penalties for non-compliance with the pool safety laws are up to maximum of 165 penalty units.

Enforcement action is taken by local governments and, in some cases, by QBCC.

Dividing fences and pool owners

In many cases, using a common boundary fence is the most efficient way to comply with the pool safety requirements.

Provisions in the *Building Act 1975* and the *Neighbourhood Disputes Resolution Act 2011*, facilitate a common sense approach to fencing work such as encouraging agreements between neighbours and ‘like for like’ replacement of fences.

See “Using dividing fences as a pool barrier” fact sheet.

Need more information

Call QBCC on 139 333, check out our website at qbcc.qld.gov.au or visit your local QBCC office.