

2004

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CIVIL LAW (SALE OF RESIDENTIAL PROPERTY)
REGULATIONS 2004
Subordinate Law No SL 2004-25**

EXPLANATORY STATEMENT

**Circulated by authority of the
Attorney General
Jon Stanhope MLA**

Overview

The *Civil Law (Sale of Residential Property) Act 2003* was passed by the Legislative Assembly in August 2003. The Act establishes a new process for the making and exchange of contracts for the sale of residential property and introduces new rules for public auctions of residential property in the ACT. The new conveyancing scheme is designed to reduce significantly the incidence of the unethical practice of gazumping and provide increased levels of consumer protection for both buyers and sellers of residential property. The new public auction rules are designed to increase transparency in the auction process and limit opportunities for dummy bidding to occur.

The object of this Regulation is to make regulations under the *Civil Law (Sale of Residential Property) Act 2003* with respect to the following matters:

- specifying the building conveyancing inquiry documents that must be attached to the contract for sale, if available, as required in subparagraph 9(1)(g)(i) of the Act;
- specifying certain requirements that must be included in a building and compliance inspection report as required in subparagraph 9(1)(g)(iii) of the Act;
- specifying the lease conveyancing inquiry statements, if available, that must be obtained from the ACT Planning and Land Authority;
- specifying certain requirements that must be included in a pest inspection report;
- requiring building and compliance inspectors and pest inspectors to hold professional indemnity insurance;
- prescribing several options to accommodate proof of identity for people bidding at auctions;
- requiring agents to keep a bidders record and setting out specific requirements that must be kept in the bidders record for an auction of a residential property;
- requiring that only a seller's agent or an employee of the agent can make entries in a bidders record;
- transitional provisions; and
- Schedule 1, which sets out standard conditions for the conduct of public auctions of residential property.

This Regulation is made under the *Civil Law (Sale of Residential Property) Act 2003* including sections 7, 9, 24, 25, 31A and 40 (the general regulation-making power).

Regulations

PART 1 Preliminary

Regulations 1 and 2 – Name of regulations and commencement

Regulations 1 and 2 are formal requirements for all regulations, specifying the title of the regulations and the commencement date. Regulation 2 provides that regulations 7 (3), (4) and (5), 10 (3), (4) and (5), 11 and 12 will commence on a day fixed by the Minister by written notice. The remainder of the regulations will commence on 1 July 2004.

Regulation 3 – Dictionary

This regulation explains that the dictionary at the end of the regulations is part of the regulations.

Regulation 4 – Notes

This regulation explains that a note is explanatory only and is not part of the regulations.

Regulation 5 – Offences against regulations – application of Criminal Code etc

This regulation explains that other legislation applies to an offence under the regulations.

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

This regulation displaces section 47(6) of the *Legislation Act 2001* to remove the need to notify the prescribed standards. As the standards are subject to copyright, they cannot be published on the legislation register. Extensive consultation was undertaken with industry on this issue and prescription of the standards is strongly supported by both industry and their insurers. The standards are available for purchase from Standards Australia.

PART 2 Sale of Residential property

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

This regulation sets out the features that must be included in a building and compliance inspection report and adopts the Australian Standard for property inspections of residential buildings, as the standard to which such reports must be prepared. The regulation provides guidance for building consultants and building inspectors about the level of detail required and highlights specific information that must be provided in the report.

The regulation also modifies the standard to remove the need to provide information in the report on minor cosmetic matters and removes the provisions relating to special purpose reports. Special purpose reports provide information on structures outside the competence of most building inspectors and consultants and are not necessary for the purposes of the *Civil Law (Sale of Residential Property) Act 2003*.

The main requirements for a building and compliance inspection report are:

- it must be prepared in accordance with the prescribed standard;

- it must state the date of the inspection and the date the report was prepared;
- it must state the insurance policy number and expiry date, or contain a copy of the certificate of currency of insurance for the person who prepared the report;
- it must contain particular statements detailed in the regulations about the information that must be given to the Territory for inclusion in a public register; and
- it must set out the circumstances in which reliance may be had on the report.

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

This regulation lists the information that a seller must obtain from the ACT Planning and Land Authority about the structures on the land.

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

This regulation lists the information that a seller must obtain from the ACT Planning and Land Authority about matters that might affect the property, for example, any development applications that may affect the property.

Regulation 10 – Pest inspection report – Act, s 7, def *pest inspection report*

This regulation sets out the features that must be included in a pest inspection report and adopts the Australian Standard for timber pest inspections of buildings as the standard to which such reports must be prepared. The regulation provides guidance for pest inspectors about the level of detail required in a report.

The main requirements for a pest inspection report are:

- it must be prepared in accordance with the prescribed standard;
- it must state the date of the inspection and the date the report was prepared;
- it must state the insurance policy number and expiry date or contain a copy of the certificate of currency of insurance for the person who prepared the report;
- it must contain particular statements detailed in the regulations about the information that must be given to the Territory for inclusion in a public register; and
- it must set out the circumstances in which reliance may be had on the report.

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

This regulation provides that a building and compliance inspection report and a pest inspection report can only be prepared by someone who holds the appropriate professional indemnity insurance. The professional indemnity insurance must provide for a minimum limit of indemnity of \$500,000 or another amount determined in writing by the Minister.

Regulation 12 – Building and pest inspection information register

This regulation provides that the chief executive must keep a register of information about building and compliance inspection reports and pest inspection reports. The register must include information about the address of the property, the inspection date, and the name of the person who prepared the report. This information will be kept for one year after the inspection date on the report.

PART 3 Public auctions of residential property

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

This regulation sets out the forms of identity documentation that are suitable for use as proof of identity by a person registering to bid at a public auction of residential property.

Regulation 14 – Bidders record – Act, s 25

This regulation sets out the information that must be recorded in the bidders record and provides guidance to real estate agents about how the record is to be made and kept.

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

This regulation provides that it is an offence for a person, other than a seller’s agent or the agent’s employee, to make an entry in the bidders record. A contravention of this provision carries a maximum penalty of 10 penalty units and is a strict liability offence.

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

This regulation provides that Schedule 1 contains the standard auction conditions that apply to public auctions of residential property.

PART 4 Transitional

Regulation 17 – References to *Building Act 2004*

This regulation provides that a reference to the *Building Act 2004* also includes a reference to the *Building Act 1972*. This transitional provision is necessary due to the commencement of the *Building Act 2004* later this year and will expire on the day that Act commences.

Regulation 18 – Reports prepared before 1 July 2004

This provision ensures that building and compliance inspection reports and pest inspection reports prepared prior to 1 July 2004 are valid for the purposes of section 9 of the *Civil Law (Sale of Residential Property) Act 2003*. This regulation expires on 30 June 2005.

Regulation 19 – Reports prepared before commencement of insurance requirements

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

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

Schedule one contains the standard conditions that will apply when conducting a public auction of residential property.