

## Information Bulletin No 53

September 2000

### Conveyancing (Sale of Land) Regulation 2000

The Conveyancing (Sale of Land) Regulation 2000 (the Regulation) has, from 1 September 2000, repealed and replaced the Conveyancing (Sale of Land) Regulation 1995 (the 1995 Regulation). The Regulation has been made as part of the process of staged repeal under the Subordinate Legislation Act 1989 and contains very few changes from the 1995 Regulation.

The Regulation, made under the Conveyancing Act 1919 (the Act), makes provision with respect to the following matters-

- the documents that a vendor must attach to a contract for the sale of land, and the terms and warranties that the vendor is taken to have included in such a contract and in an option to purchase residential property, under sections 52A and 66ZA of the Act;
- the form of the statement regarding the cooling off period that sections 66X and 66ZH of the Act require every contract for the sale of residential property, and every option to purchase such property, to contain;
- exemptions from the application of section 52A and Divisions 8 (Sale of residential property) and 9 (Options for purchase of residential property) of Part 4 of the Act;
- purchasers' remedies for breaches of vendors' obligations under section 52A or 66ZA of the Act.

### Changes from the 1995 Regulation

For the most part the Regulation repeats the provisions of the 1995 Regulation. However, a few changes that should be noted are:

#### Change to Warning Notice

The warning notice that must be attached to a contract pursuant to Clause 5 and Schedule 1 item 10 of the Regulation has changed. The new notice should read as follows:

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

**Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.**

The notice must be legibly printed, in bold type, with the words "IMPORTANT NOTICE TO VENDORS AND PURCHASERS" in capital letters at least 3 millimetres high, and the rest of the notice printed in figures and letters at least 1 millimetre high.

As the warning notice is different to that incorporated in the latest edition of the standard Contract for the Sale of Land, a separate notice complying with the Regulation will need to be attached to the contract until a new edition of the contract is released.

#### Changes to the Warranty

The provisions of the Warranty implied by the Regulation are amended only in respect of statutory changes that have occurred. The changes are:

- Schedule 3 Part 3 Item 8(d) has been inserted in anticipation of the commencement of the Access to Neighbouring Land Act 2000 to provide for a warranty with respect to an access order, or an application for such an order, under that Act.
- Schedule 3 Part 3 Item 17 has been inserted referring to “a direction under section 47(1) of the Native Vegetation Act 1997”. This matter replaces the reference to “a requirement under section 21CA (1) of the Soil Conservation Act 1938” (formerly included in Schedule 3 Part 3 Item 17(a) of the 1995 Regulation) which has been repealed and replaced by the provision in the Native Vegetation Act 1997.

### Changes to the Exemptions

There are some minor changes to the exemptions from compliance with section 52A of the Conveyancing Act 1919 set out in the Regulation. These are:

- deletion of clause 10(1)(b) which will remove the exemption for contracts under section 34 of the Crown Lands Act 1989,
- addition of new clause 9(2) which provides that the present exemption for Landcom will lapse on 1 September 2001.

Also, Schedule 4, which relates to exemptions for certain contracts and options, has been amended to clarify its application to options and contracts resulting from options.

### Unchanged Features of the Regulation

Many of the features of the 1995 Regulation are carried forward in the Regulation. Some of the features of the 1995 Regulation that are retained are:

#### Prescribed Documents

##### Property Certificate

The Regulation allows the attachment of a copy of the folio of the Register printed by a party who has on-line computer access to Land and Property Information New South Wales Automated Land Titles System pursuant to section 96B (2) of the Real Property Act 1900. The on-line search must be certified as having been provided in accordance with section 96B(2).

##### Relevant part only of prescribed documents

The Regulation requires the attachment of "the documents specified in Schedule 1 (*or such parts of those documents*) as are relevant to the land". Where part only of a document is to be attached to a contract or option, care should be taken to ensure that all relevant parts are included. It is suggested that the front page of a plan or document bearing the registration details will always be an essential attachment.

##### Documents in the case of an unregistered plan

Where land is being sold with reference to an unregistered plan the prescribed documents are those that relate to the land from which the parcel is to be created and not necessarily all of the land affected by the unregistered plan of subdivision.

##### Use of Section 149 Certificate

The Regulation provides that the section 149 certificate may relate to lots shown in the latest plan, or to the land from which those lots have been created and may also relate to other land. This does not affect the warranty with respect to the section 149 certificate and the use of an old certificate is at the risk of the vendor.

### Benefiting easements and profits à prendre

The Regulation requires that any document that is shown on the folio of the Register that creates an easement, profit à prendre, restriction on the use of land or positive covenant benefiting or burdening the land must be attached to the contract or option.

### Part Strata Schemes

Where the land is a lot in a strata scheme that affects part only of a building, a copy of the strata management statement required by section 28R of the Strata Schemes (Freehold Development) Act 1973 is required to be attached.

### Community Schemes

The Regulation requires all registered plans and documents relating to a lot in a community scheme to be attached to the contract.

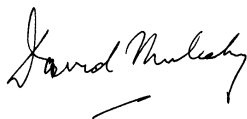
### Prescribed Warranty

#### Warranty – General

The terms of the implied warranty are set out in Part 1 (contracts) and Part 2 (options) of Schedule 3 to the Regulation. Part 3 of Schedule 3 lists matters that are “adverse affectations” for the purposes of the Warranty. While the intention of the Regulation is to remake the provisions of the 1995 Regulation without substantial alteration, there are some minor amendments to Part 3 of Schedule 3 as noted above.

#### The right to rescind for a breach of warranty

The right to rescind a contract for breach of a warranty is qualified to prevent purchasers from relying upon a technical breach to rescind a contract or option for reasons unrelated to the warranty. The Regulation provides that a contract or option may only be rescinded for a breach of the implied warranty where the breach constitutes a failure to disclose to the purchaser in the contract a matter of which he or she was unaware and which is of such a nature that the purchaser would not have entered into the contract or option had he or she been aware of its existence.



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