

Queensland



**BUILDING UNITS AND
GROUP TITLES
AMENDMENT BILL 1995**

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1995

A BILL

FOR

An Act to amend the *Building Units and Group Titles Act 1994*

The Parliament of Queensland enacts— 1

Short title 2

Clause 1. This Act may be cited as the *Building Units and Group Titles Amendment Act 1995*. 3
4

Act amended 5

Clause 2. This Act amends the *Building Units and Group Titles Act 1994*. 6

Insertion of new pt 4, div 4 7

Clause 3. After part 4, division 3— 8
insert— 9

‘Division 4—Protection for financiers 10

‘Meaning of “financier” for section 96B 11

‘96A.(1) For section 96B, a person is a financier for a contract if a contractor for the contract and the person give written notice signed by both of them to the body corporate under the contract that the person is a financier for the contract. 12
13
14
15

‘(2) A person stops being a financier for a contract if the person gives the body corporate under the contract a written notice withdrawing the notice given under subsection (1). 16
17
18

‘(3) A notice under subsection (2) may be given without the contractor’s agreement. 19
20

‘(4) However, a person is a financier for the contract only if the person is— 21
22

(a) a financial institution; or 23

(b) a person who, in the ordinary course of the person’s business, supplies, or might reasonably be expected to supply, finance for contracts; or 24
25
26

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- (c) for a contract in existence immediately before the commencement—a person who, at the time the person supplied finance for the contract, was a person mentioned in paragraph (b). 1
2
3
- ‘(5) In this section— 4
- “**contract**” means a body corporate management contract or service contract. 5
6
- “**contractor**” means a body corporate manager or service contractor. 7
- ‘Protection for financier of contract** 8
- ‘**96B.(1)** The body corporate under a financed contract may terminate the contract only if— 9
10
- (a) the body corporate has given the financier for the contract written notice that the body corporate is entitled to terminate the contract; 11
12
and 13
- (b) at least 21 days have passed since the notice was given. 14
- ‘(2) However, the body corporate may not terminate the contract if the financier is, under arrangements between the financier and the contractor for the contract, acting under the contract in the place of the contractor. 15
16
17
- ‘(3) A body corporate may give a notice under subsection (1) only if, but for the subsection, the body corporate is entitled to terminate the contract when the notice is given. 18
19
20
- ‘(4) A financier may act under the contract for subsection (2) only if the financier has previously given written notice to the body corporate of the financier’s intention to act under the contract. 21
22
23
- ‘(5) For acting under the contract for subsection (2), the financier may authorise a person to act for the financier, but only if the body corporate has first approved the person. 24
25
26
- ‘(6) For deciding whether to approve a person under subsection (5), the body corporate may have regard only to— 27
28
- (a) the character of the person and any associates; and 29
- (b) the competence, qualifications and experience of the person and any associates, and the extent to which the person and any associates have received or will receive training. 30
31
32

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- ‘(7) However, the body corporate must not— 1
- (a) unreasonably withhold approval of the person; or 2
 - (b) require or receive a fee or other consideration for approving the 3
person (other than reimbursement for legal expenses reasonably 4
incurred by the body corporate in relation to the application for its 5
approval). 6

‘(8) When the financier is acting under the contract under subsection (2), 7
the subsection does not operate to stop the body corporate from terminating 8
the contract for something done or not done after the financier started to act 9
under the contract. 10

‘(9) Nothing in this section stops the ending of a financed contract by the 11
mutual agreement of the body corporate, the contractor and the financier. 12

‘(10) In this section— 13

“**contract**” means a body corporate management contract or service 14
contract. 15

“**contractor**” means a body corporate manager or service contractor. 16

“**financed contract**” means a contract for which there is a financier. 17

“**financier**” see section 96A. 18

“**terminate**”, for a contract, means to terminate the contract other than 19
under section 95.¹. 20

**Amendment of s 157 (Register of body corporate management and 21
service contracts) 22**

Clause 4. Section 157— 23

insert— 24

‘(3) The body corporate under a financed contract under section 96B² 25

¹ Section 95 (Discretionary termination of early appointments of body corporate manager or service contractor)

² Section 96B (Protection for financier of contract)

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must note in the register the giving and withdrawing of all notices under section 96A(1) and (2).³.

Amendment of s 163 (Statement to be given by seller to buyer)

Clause **5.** Section 163, ‘section’—
omit, insert—
‘part’.

Replacement of s 170 (Avoidance of contract for noncompliance with part)

Clause **6.** Section 170—
omit, insert—

‘Avoiding contract because of prejudice to buyer

‘170.(1) A person who enters into a contract to buy a lot or proposed lot may, by giving written notice (a **“notice of avoidance”**) to the seller, avoid the contract if the person is materially prejudiced by—

- (a) the seller’s failure to comply with this part; or
- (b) the contents of a supplementary notice given under section 167.⁴

‘(2) The notice of avoidance must be given to the seller within 30 days after—

- (a) subject to paragraphs (b) and (c), for a failure to comply with this part—the buyer or the buyer’s agent becomes aware of the failure; or
- (b) for an inaccuracy in a statement given under section 163⁵—the buyer enters into the contract to buy the lot; or
- (c) for an inaccuracy in a supplementary notice given under section 167—the buyer or the buyer’s agent receives the

³ Section 96A (Meaning of “financier” for section 96B)

⁴ Section 167 (Inaccuracies and changes of circumstances)

⁵ Section 163 (Statement to be given by seller to buyer)

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supplementary notice; or

- (d) for the contents of (other than an inaccuracy in) a supplementary notice given under section 167—the buyer or the buyer’s agent receives the supplementary notice.

‘(3) If the seller is the original owner of the lot, the contract may be avoided even though it is an executed contract, but the right to avoid the contract under this section is lost if notice of avoidance is not given within 6 months after settlement.

‘(4) If the seller is not the original owner of the lot, the right to avoid the contract under this section is lost once settlement has taken place.

‘(5) For this section, the buyer is taken—

- (a) to have been aware of all information given to the buyer or the buyer’s agent by or for the seller; and
- (b) to have become aware of the information when it is given.’.

Amendment of s 222 (Certain arrangements to continue)

Clause 7.(1) Section 222(2) to (4)—

omit, insert—

‘(2) However, the provisions of this Act, and not the former Act, apply to a body corporate management contract or service contract entered into on or after 24 October 1994 unless subsection (3) applies to the contract.

‘(3) This subsection applies to a contract if—

- (a) the contract is a body corporate management contract or service contract; and
- (b) an original owner disclosed an intention for the body corporate to enter into the contract in—
- (i) a prospectus registered with the Australian Securities Commission before the commencement; or
- (ii) if subparagraph (i) does not apply—a notice given under section 49⁶ of the former Act to a buyer entering into an

⁶ Section 49 (Duties of original proprietor)

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- agreement before 24 October 1994 to buy a lot; and 1
- (c) if paragraph (b)(i) applies—the prospectus contemplated the 2
registration of a plan (the “**plan**”); and 3
- (d) if paragraph (b)(ii) applies, and there was only 1 agreement 4
entered into before 24 October 1994 to buy a lot— 5
- (i) the agreement to buy a lot was entered into in contemplation 6
of the registration of a plan (the “**plan**”); and 7
- (ii) the buyer of the lot was not an associate of the original 8
owner; and 9
- (e) if paragraph (b)(ii) applies, and there were 2 or more agreements 10
entered into before 24 October 1994 to buy lots— 11
- (i) a notice under section 49 of the former Act was given to 12
each buyer; and 13
- (ii) each agreement to buy a lot was made in contemplation of 14
the registration of a plan (the “**plan**”); and 15
- (iii) the buyer of at least 1 lot was not an associate of the original 16
owner; and 17
- (f) the plan was not registered under the former Act; and 18
- (g) the contract would have been a prescribed arrangement within the 19
meaning of the former Act if it had been entered into by the body 20
corporate before the commencement; and 21
- (h) the plan is registered under this Act, and the contract takes effect, 22
within 3 years after the commencement. 23
- ‘(4) For subsection (3)(b), it is sufficient if the prospectus or notice 24
disclosed the general nature of the contract. 25
- ‘(5) If subsection (3) applies to a contract, the provisions of the former 26
Act (including the provisions about prescribed arrangements) apply or 27
continue to apply, and this Act does not apply, to the contract. 28
- ‘(6) If under subsection (5) the former Act applies or continues to apply 29
to a contract (the “**original contract**”), the former Act— 30
- (a) applies or continues to apply to the original contract if it is 31
transferred or changed (other than by extending its term); and 32

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(b) also applies to a new contract entered into because of a right or option for 1 or more renewals contained in the original contract. 1
2

‘(7) The provisions of the former Act about prescribed arrangements continue to apply under this section with any necessary changes and any changes prescribed under a regulation.’. 3
4
5

Insertion of new ss 222A and 222B 6

Clause 8. After section 222— 7

insert— 8

‘Limitation on exclusive entitlements 9

‘222A.(1) This section applies if— 10

(a) under section 95,⁷ a body corporate terminates the appointment of a body corporate manager or service contractor; or 11
12

(b) under section 96,⁸ a body corporate terminates a body corporate management contract or service contract; or 13
14

(c) a body corporate management contract or service contract is terminated by mutual agreement; or 15
16

(d) a body corporate management contract or service contract comes to an end and is not renewed under a provision of the contract providing for its renewal. 17
18
19

‘(2) For subsection (1)— 20

“**appointment**” means an appointment in force immediately before the commencement. 21
22

“**contract**” means a contract in existence immediately before the commencement. 23
24

‘(3) A by-law (other than an exclusive use by-law) (the “**affected by-law**”) of the body corporate providing for a person (the “**first person**”) 25
26

⁷ Section 95 (Discretionary termination of early appointments of body corporate or service contractor)

⁸ Section 96 (Termination of body corporate management contract or service contract)

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to carry on a business as a body corporate manager or service contractor is repealed, but only to the extent that an entitlement it gives is to be enjoyed exclusively by the first person.

‘(4) If a by-law is affected under subsection (3), the body corporate must not give a person—

- (a) an entitlement, if the entitlement would conflict with someone else’s entitlement under the continuing operation of the affected by-law; or
- (b) an authority under section 97,⁹ if use of the common property under the authority would substantially interfere with someone else’s access to a part of a lot or common property used by the first person immediately before the by-law was affected to carry on the business mentioned in subsection (3).

‘(5) To the extent a by-law is repealed under subsection (3), the body corporate must lodge a written notice with the registrar advising of the repeal.

‘Limitation on term of appointment

‘222B.(1) This section applies to a body corporate management contract or service contract if it—

- (a) was entered into on or after 24 October 1994, but before the commencement; and
- (b) is not a contract to which section 222(3) applies.

‘(2) If the contract provides for the appointment of a body corporate manager or service contractor for a term longer than 10 years, the contract is taken to provide for a term of only 10 years.

‘(3) For subsection (2), the term of the contract is the term decided after allowing for rights or options of renewal.’

⁹ Section 97 (Use of common property by service contractor)

	Amendment of s 223 (Saving of existing community titles schemes etc.)	1
		2
Clause	9.(1) Section 223(3)—	3
	<i>omit, insert—</i>	4
	‘(3) If an instrument under the former Act was signed, or a plan under the former Act was sealed by a local government, before the commencement or a later day prescribed under a regulation, the provisions of the former Act for lodging the instrument or plan continue to apply.	5
		6
		7
		8
	‘(3A) If an instrument or plan under the former Act is lodged for registration, but not registered, before the commencement, registration is to be finished under this Act to the greatest practicable extent.’	9
		10
		11
	(2) Section 223(9)—	12
	<i>omit, insert—</i>	13
	‘(9) If a seller of a lot or proposed lot (other than the original owner) entered into a contract before the commencement for the sale of the lot or proposed lot—	14
		15
		16
	(a) section 40 ¹⁰ of the former Act applies to the contract, and applies even though, if it is for the sale of a proposed lot, the lot is not created until the plan is registered after the commencement; but	17
		18
		19
	(b) a body corporate may, rather than comply with section 40 of the former Act, give a certificate under section 161(4) ¹¹ of this Act.’	20
		21
	Insertion of new s 223A	22
Clause	10. After section 223—	23
	<i>insert—</i>	24
	‘Use of seal by body corporate manager	25
	‘ 223A.(1) Until the annual general meeting of a body corporate first happening after the commencement, a body corporate manager may continue to use the body corporate’s seal in the way the body corporate	26
		27
		28

¹⁰ Section 40 (Supply of information, certificates and copies by body corporate)

¹¹ Section 161 (Information to be given to interested persons etc.)

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manager could use it under the former Act immediately before the commencement. 1
2

‘(2) Subsection (1) applies subject to an ordinary resolution of the body corporate under section 47(3).¹². 3
4

Amendment of s 224 (Saving of by-laws) 5

Clause **11.(1)** Section 224— 6

insert— 7

‘(4A) For deciding, for subsection (4)(b), whether a by-law could have 8
been made under this Act, section 97(5)¹³ is taken not to have been 9
enacted.’. 10

(2) Section 224(5), ‘before 1 January 1996’— 11

omit, insert— 12

‘within 18 months after the commencement’. 13

(3) Section 224(10)— 14

omit. 15

Amendment of s 225 (Saving of special rights) 16

Clause **12.** Section 225— 17

insert— 18

‘(2) For deciding, for subsection (1)(b), whether rights are of a type that 19
could be given by an exclusive use by-law under this Act, section 97(5)¹⁴ is 20
taken not to have been enacted.’. 21

¹² Section 47 (Body corporate’s seal)

¹³ Section 97 (Use of common property by service contractor)

¹⁴ Section 97 (Use of common property by service contractor)