

Queensland



**LAND SALES AND LAND
TITLE AMENDMENT ACT
1997**

Act No. 40 of 1997

Queensland



LAND SALES AND LAND TITLE AMENDMENT ACT 1997

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Queensland



Land Sales and Land Title Amendment Act 1997

Act No. 40 of 1997

**An Act to amend the *Land Sales Act 1984* and the *Land Title Act 1994*,
and for other purposes**

[Assented to 25 August 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Land Sales and Land Title Amendment Act 1997*.

Schedule

2. The schedule amends the Acts mentioned in it.

PART 2—AMENDMENT OF LAND SALES ACT 1984

Act amended in pt 2

3. This part amends the *Land Sales Act 1984*.

Insertion of new s 2

4. After section 1—

insert—

‘Objects of Act

‘2. The objects of this Act are—

- (a) to facilitate property development in Queensland; and
- (b) to protect the interests of consumers in relation to property development; and
- (c) to ensure that proposed allotments and proposed lots are clearly identified; and

- (d) to achieve the objects mentioned in paragraphs (a) to (c) without imposing procedural obligations on local governments in addition to their obligations under the *Local Government (Planning and Environment) Act 1990*.’

Amendment of s 5 (Application of Act)

5.(1) Section 5(1)—

omit, insert—

‘**5.(1)** This Act applies to a sale or purchase of a proposed allotment, or a proposed lot, wherever the agreement under which the sale or purchase was entered upon was made, if—

- (a) when the proposed allotment becomes an allotment, it will be situated in Queensland; or
- (b) when the proposed lot becomes a registered lot, it will be situated in Queensland.’

(2) Section 5(2), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

Amendment of s 6 (Interpretation)

6.(1) Section 6(1), definitions “**land held from the Crown for an estate of leasehold**”, “**relevant freehold land**”, “**relevant land**”, and “**relevant leasehold land**”—

omit.

(2) Section 6(1)—

insert—

‘ “**allotment**” means a single parcel of land, other than a lot within the meaning of this Act, the boundaries of which are shown on a plan of survey registered under the *Land Act 1994* or *Land Title Act 1994*.

“**disclosure plan**” means a plan given, or to be given, to a purchaser of a

proposed allotment under section 9.¹

“disclosure statement” means a statement given, or to be given, to a purchaser of a proposed allotment under section 9.¹

“licensed surveyor” see the *Surveyors Act 1977*, section 5.²

“Planning Act” means the *Local Government (Planning and Environment) Act 1990*.

“proposed allotment” means a single parcel of land, other than a lot within the meaning of this Act, the boundaries of which are shown, or to be shown, on a plan of survey that is to be registered under the *Land Act 1994* or *Land Title Act 1994*.

“real estate agent” means a person licensed under the *Auctioneers and Agents Act 1971* as a real estate agent.

“State leasehold land” means land leased under the *Land Act 1994* or a miners homestead under the *Land Act 1994*.³

“subdivision application” means an application made under the Planning Act, section 5.1⁴ to subdivide land into proposed allotments (within the meaning of this Act).’.

(3) Section 6(1), definition **“registrable instrument of transfer”**, paragraphs (a) and (b), ‘relevant’—

¹ Section 9 (Identification of land)

² The *Surveyors Act 1977*, section 5 defines **“licensed surveyor”** as meaning ‘a registered surveyor whose registration is endorsed under this Act to the effect that the registered surveyor may perform cadastral surveys’.

³ The *Land Act 1994*, section 495 defines a **“miners homestead”** as meaning ‘any of the following held under the *Miners’ Homestead Leases Act 1913*—

- (a) miner’s homestead lease;
- (b) miner’s homestead perpetual lease;
- (c) business area;
- (d) market garden area;
- (e) residence area;

and, to remove any doubt, it is declared that it includes a special perpetual mining purposes lease issued under the *Commonwealth Aluminium Body Corporate Pty Limited Agreement Act 1957*, the *Alcan Queensland Pty Limited Agreement Act 1965* or the *Aurukun Associates Agreement Act 1975*.’.

⁴ *Local Government (Planning and Environment) Act 1990*, section 5.1 (Application for subdivision etc.)

omit, insert—

‘a proposed allotment of’.

(4) Section 6(1), definition **“registrable instrument of transfer”**, paragraph (b), before ‘leasehold’—

insert—

‘State’.

(5) Section 6(1), definition **“sale”** or **“sell”**, ‘**“sale”** or’—

omit.

(6) Section 6(1), definition **“vendor’s agent”**, paragraphs (a) and (b), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

(7) Section 6(2)(a), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

(8) Section 6(2)(a), ‘the land’ (first mention)—

omit, insert—

‘the allotment’.

(9) Section 6(2)(a), from ‘, and the person’—

omit.

(10) Section 6(2)(b), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

(11) Section 6(2)(b), ‘the land’ (first mention)—

omit, insert—

‘the allotment’.

(12) Section 6(2)(b), from ‘, and the person’—

omit.

(13) Section 6(3), ‘“sale” or’—
omit.

Amendment of pt 2 (Sale of relevant land)

7. Part 2, heading, ‘**RELEVANT LAND**’—
omit, insert—
‘PROPOSED ALLOTMENTS’.

Omission of s 7 (Construction of certain provisions)

8. Section 7—
omit.

Amendment of s 7A (Part not to apply to large transactions)

9.(1) Section 7A(1), ‘subdivisional portion, or proposed subdivisional portion, of relevant land’—

omit, insert—

‘proposed allotment’.

(2) Section 7A(2), definition “**large transaction**”, ‘subdivisional portions, or proposed subdivisional portions, of relevant land’—

omit, insert—

‘proposed allotments’.

(3) Section 7A(2), definition “**large transaction**”, paragraphs (a) and (b), ‘portion’—

omit, insert—

‘proposed allotment’.

Amendment of s 8 (Restriction on selling and purchasing)

10.(1) Section 8, heading, ‘**and purchasing**’—
omit.

(2) Section 8(1)—

omit, insert—

‘8.(1) A person may sell a proposed allotment of freehold land only if, when the purchaser enters upon the purchase of the allotment—

- (a) local government unconditional approval of the subdivision application for the land is in force under the Planning Act; or
- (b) local government approval of the subdivision application for the land, subject to conditions other than conditions requiring the applicant to construct works on the land, is in force under the Planning Act; or
- (c) the following approvals are in force under the Planning Act—
 - (i) approval of the subdivision application for the land, subject to conditions requiring the applicant to construct works on the land; and
 - (ii) approval of the engineering drawings and specifications for the works mentioned in subparagraph (i).⁵

Maximum penalty—200 penalty units or 1 year’s imprisonment.

‘(1A) A person may sell a proposed allotment of State leasehold land only if, when the purchaser enters upon the purchase of the allotment, the lessee has the Minister’s approval, under the *Land Act 1994*,⁶ to subdivide the land.

Maximum penalty—200 penalty units or 1 year’s imprisonment.’

(3) Section 8(3)—

omit.

⁵ See *Local Government (Planning and Environment) Act 1990*, section 5.1 (Application for subdivision etc.) and section 5.2 (Subdivisions involving works).

⁶ See the *Land Act 1994*, section 351 (Minister’s approval required for subdivision).

Amendment of s 9 (Identification of land)

11.(1) Section 9(2)—

renumber and *relocate* as section 9(4).

(2) Section 9(1)—

omit, insert—

‘9.(1) Before a purchaser enters upon a purchase of a proposed allotment, the vendor must give the purchaser—

- (a) a disclosure plan and disclosure statement for the proposed allotment; or
- (b) a copy of the approved plan of survey for the proposed allotment sealed under the Planning Act, section 5.3.⁷

Maximum penalty—100 penalty units or 6 months imprisonment.

‘(2) The disclosure plan must include the following—

- (a) the details shown on the proposal plan⁸ accompanying the subdivision application for the land;
- (b) the metes and bounds description of the proposed allotment;
- (c) contour maps of the proposed allotment showing the following contours—
 - (i) natural surface contours, with appropriate contour intervals;
 - (ii) final surface contours as specified in the engineering drawings;
- (d) fill levels, and areas to be filled, as specified in the engineering drawings for the proposed allotment.

‘(3) The disclosure statement must be signed by the purchaser and vendor and state the following—

- (a) the purchaser’s full name and address;

⁷ *Local Government (Planning and Environment) Act 1990*, section 5.3 (Sealing of plans for registration)

⁸ The proposal plan is required under the *Local Government (Planning and Environment) Act 1990*, section 5.1(2)(c).

- (b) the vendor's full name and address;
- (c) that the vendor or vendor's agent has given the purchaser the disclosure plan for the proposed allotment;
- (d) if the local government approval of the subdivision application for the land is subject to conditions mentioned in section 8(1)(b)—the conditions;
- (e) that the purchaser has—
 - (i) for an allotment capable of being staked by a licensed surveyor—inspected the proposed allotment after it has been staked by the surveyor; or
 - (ii) for an allotment that is not capable of being staked by a licensed surveyor—inspected the proposed allotment; or
 - (iii) been given the opportunity, and declined, to do an inspection mentioned in subparagraph (i) or (ii);
- (f) that the vendor must give the purchaser the registrable instrument of transfer for the allotment, together with the other documents mentioned in section 10A(1), not later than 18 months after the purchaser enters upon the purchase of the allotment;
- (g) that if the vendor or vendor's agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor's agent before the vendor gives the purchaser the registrable instrument of transfer for the allotment;
- (h) the day the statement is signed.

'(5) If the vendor or the vendor's agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor's agent before the vendor gives the purchaser the registrable instrument of transfer for the allotment.

'(6) The staking of a proposed allotment does not require the lodgment of an identification survey plan under the *Surveyors Regulation 1992*, section 30 if the only requirement under an Act for the staking is under subsection (3)(e).

'(7) In this section—

“appropriate contour intervals” means contour intervals of not more than the following—

- (a) for a proposed allotment of not more than 2 000 m²—500 mm in height;
- (b) for a proposed allotment of more than 2 000 m²—the smallest of the following contour intervals—
 - (i) the contour intervals shown on a local government topographic map that includes the allotment;
 - (ii) the contour intervals shown on a topographic map that includes the allotment and is held in the department administered by the minister administering the *Land Act 1994* or *Land Title Act 1994*.

(3) Section 9(4), as renumbered, after ‘subsection (1)’—

insert—

‘or (3)’.

Replacement of s 10 (Delivery of registered plan)

12. Section 10—

omit, insert—

‘Vendor must tell purchaser about significant variations between disclosure plan and later plans

‘10.(1) Subsections (2) and (3) apply if—

- (a) the vendor of a proposed allotment has not given the purchaser of the proposed allotment a registrable instrument of transfer for the allotment; and
- (b) there is a significant variation between the details contained in—
 - (i) the disclosure plan given to the purchaser under section 9(1) and a plan of survey the vendor proposes to register under the *Land Act 1994* or *Land Title Act 1994* (“**survey plan**”) for the proposed allotment; or
 - (ii) the disclosure plan given to the purchaser under section 9(1) and a plan mentioned in section 10A(1)(b) (“**as constructed**

plan”) for the proposed allotment.

‘(2) As soon as practicable, but not later than 14 days, after the vendor is given the plan of survey the vendor proposes to register, the vendor must give the purchaser written notice (“**significant variation notice**”)—

- (a) detailing the nature and extent of the significant variation; and
- (b) advising the purchaser that the purchaser may avoid the instrument relating to the sale by written notice given to the vendor within the prescribed period.

Maximum penalty—100 penalty units or 6 months imprisonment.

‘(3) If the vendor gives the purchaser a significant variation notice—

- (a) the purchaser may avoid the instrument relating to the sale by written notice given to the vendor within the prescribed period; and
- (b) the vendor must not, until the end of the prescribed period—
 - (i) ask the purchaser to pay the balance of the purchase price; or
 - (ii) give the purchaser a registrable instrument of transfer for the allotment.

Maximum penalty for paragraph (b)—100 penalty units or 6 months imprisonment.

‘(4) If the vendor contravenes this section, the purchaser may avoid the instrument relating to the sale by written notice given to the vendor—

- (a) for a contravention of subsection (2)—before the vendor gives the purchaser the registrable instrument of transfer for the allotment; or
- (b) for a contravention of subsection (3)(b)—within 14 days after the end of the prescribed period.

‘(5) In this section—

“**prescribed period**” means—

- (a) 30 days after the vendor gives the purchaser a significant variation notice; or
- (b) the period agreed, in writing, by the vendor and purchaser after the vendor gives the purchaser the significant variation notice.

“significant variation” means—

- (a) in the details between a disclosure plan and a survey plan—
 - (i) a variation of more than 2% in details of area; or
 - (ii) a variation of more than 1% in details of linear dimensions;
or
- (b) in the details between a disclosure plan and an as constructed plan—a variation of more than 500 mm in height in details of surface contours or fill levels.

‘Purchaser must be given registrable instrument of transfer and other documents

‘10A.(1) The vendor of a proposed allotment must give the purchaser the registrable instrument of transfer for the allotment, together with the following documents relating to the allotment, not later than 18 months after the purchaser enters upon the purchase of the allotment—

- (a) a copy of the plan of survey registered under the *Land Act 1994* or *Land Title Act 1994* (**“registered survey plan”**);
- (b) if works were constructed in accordance with an approval under the Planning Act, section 5.2,⁹ a copy of the plan showing the constructed works (**“as constructed plan”**);
- (c) a statement certified by a licensed surveyor—
 - (i) that there are no variations between the details of the area or linear dimensions contained in the disclosure plan given to the purchaser under section 9(1) and the registered survey plan for the proposed allotment; or
 - (ii) if there are variations, other than variations of which notice is required to be given under section 10—detailing the nature and extent of the variations.

‘(2) If the vendor contravenes this section, the purchaser may avoid the instrument relating to the sale by written notice given to the vendor before

⁹ *Local Government (Planning and Environment) Act 1990*, section 5.2 (Subdivisions involving works)

the vendor gives the purchaser the registrable instrument of transfer for the allotment.

‘(3) If the vendor contravenes subsection (1)(c), the vendor commits an offence.

Maximum penalty—20 penalty units.’.

Amendment of s 11 (Contractual requirement re holding of money)

13.(1) Section 11(1), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

(2) Section 11(1) and (1A)—

insert—

‘Maximum penalty—200 penalty units or 1 year’s imprisonment.’.

(3) Section 11(3) and (3A)—

omit.

(4) Section 11(4) and (5)—

renumber as section 11(3) and (4).

Insertion of new s 11A

14. After section 11—

insert—

‘Limit on deposit amount

‘**11A.(1)** This section applies if the amount payable by a purchaser as a deposit under an instrument relating to the sale of a proposed allotment is more than 10% of the purchase price of the proposed allotment.

‘**(2)** The purchaser may, by written notice given to the vendor before the registrable instrument of transfer for the allotment is given to the purchaser, avoid the instrument relating to the sale of the allotment.’.

Amendment of s 12 (Trustee's duty)

15. Section 12(1) and (3)—

insert—

‘Maximum penalty—200 penalty units or 1 year’s imprisonment.’.

Omission of ss 13–15

16. Sections 13 to 15—

omit.

Amendment of s 18 (Declaration of non-application of part in respect of certain relevant leasehold land)

17.(1) Section 18, heading, ‘**relevant**’—

omit, insert—

‘**State**’.

(2) Section 18(1), from ‘or any subdivisinal’—

omit, insert—

‘, or allotment or proposed allotment, of land mentioned in paragraph (a) or (b).’.

(3) Section 18(2), ‘subdivisinal portion or proposed subdivisinal portion thereof’—

omit, insert—

‘allotment or proposed allotment of the holding or miner’s homestead’.

Amendment of s 19 (Exemption from part)

18.(1) Section 19(1), ‘subdivisinal portions’—

omit, insert—

‘allotments’.

(2) Section 19(1)(b), ‘subdivisinal portion’—

omit, insert—

‘allotment’.

(3) Section 19(4), ‘subdivisional portions’—

omit, insert—

‘proposed allotments’.

(4) Section 19(5), ‘subdivisional portion’—

omit, insert—

‘proposed allotment’.

(5) Section 19(6), ‘or purchase relevant land’—

omit, insert—

‘a proposed allotment’.

(6) Section 19(6), ‘the relevant land’—

omit, insert—

‘the proposed allotment’.

(7) Section 19(7), ‘relevant land in question’—

omit, insert—

‘proposed allotment’.

Amendment of s 21 (Statement identifying proposed lot etc.)

19. Section 21(1)—

insert—

‘Maximum penalty—100 penalty units or 6 months imprisonment.’.

Amendment of s 23 (Contractual requirement re holding of money)

20.(1) Section 23(1)—

insert—

‘(aa)a firm of solicitors practising in Queensland; or’.

(2) Section 23(1)—

insert—

‘(c) a real estate agency in which a real estate agent carries on business;’.

(3) Section 23(1)—

insert—

‘Maximum penalty—200 penalty units or 1 year’s imprisonment.’.

(4) Section 23(1A)—

omit, insert—

‘**(1A)** Moneys paid under subsection (1) must be—

(a) held—

(i) if paid to an individual—by the individual in a trust account kept for this Act by—

(A) the individual; or

(B) the firm or agency of which the individual is a member;
and

(ii) if paid to a firm or agency—by the firm or agency in a trust account kept for this Act by the firm or agency; and

(iii) if paid to the public trustee—by the public trustee in a trust account kept for this Act by the public trustee; and

(b) dealt with by the individual, firm, agency, or public trustee in accordance with this part and the law governing the operation of the individual’s, firm’s, agency’s or public trustee’s trust account.’.

(5) Section 23(3) and (3A)—

omit.

(6) Section 23(5), after ‘solicitor’—

insert—

‘or firm of solicitors’.

Amendment of s 24 (Trustee’s duty)

21.(1) Section 24(1), after ‘person’—

insert—

‘, firm or agency’.

(2) Section 24(1), after ‘person’s’—

insert—

‘, firm’s or agency’s’.

(3) Section 24(1), ‘or the instrument in terms of which the money was paid’—

omit.

(4) Section 24(1) and (3)—

insert—

‘Maximum penalty—200 penalty units or 1 year’s imprisonment.’.

(5) Section 24—

insert—

‘(1A) Subsection (1) applies despite anything in the instrument under which the money was paid.’.

Omission of s 26 (Avoidance of instrument for breach of s 23)

22. Section 26—

omit.

Replacement of s 27 (Avoidance of instrument upon ground of lapse of time)

23. Section 27—

omit, insert—

‘Purchaser’s rights if not given a registrable instrument of transfer within a certain period

‘27.(1) This section applies if—

- (a) a purchaser entered upon the purchase of a proposed lot under an instrument relating to the sale of the proposed lot (the

“instrument”); and

- (b) the vendor has not given the purchaser a registrable instrument of transfer for the lot within 3½ years after the day the instrument was made.

‘(2) The purchaser may avoid the instrument by written notice given to the vendor before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot.’.

Amendment of s 31 (Contracting out of Act void)

24. Section 31(1), definition **“avoidance provision”**, paragraph (a), ‘relevant land’—

omit, insert—

‘a proposed allotment’.

Omission of s 31B (Extension of period specified in s 15 or 27)

25. Section 31B—

omit.

Amendment of s 32 (Offences against Act)

26.(1) Section 32, heading—

omit, insert—

‘Penalties under this Act are in addition to other penalties etc.’.

(2) Section 32(1) and (2)—

omit.

(3) Section 32(3), ‘Any liability imposed by this section’—

omit, insert—

‘A penalty imposed under this Act’.

(4) Section 32(4), ‘(3)’—

omit, insert—

‘(1)’.

(5) Section 32(3) and (4)—

renumber as section 32(1) and (2).

Insertion of new ss 32A and 32B

27. After section 32—

insert—

‘Responsibility for acts or omissions of representatives

‘32A.(1) In this section—

“representative” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

‘(2) Subsections (3) and (4) apply in a proceeding for an offence against this Act.

‘(3) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘Executive officers must ensure corporation complies with Act

‘**32B.(1)** The executive officers of a corporation must ensure the corporation complies with this Act.

‘**(2)** If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

‘**(3)** Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

‘**(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence; or
- (c) that information that tended to incriminate the corporation was obtained under section 30F.’.

Amendment of s 34 (Evidentiary provision)

28. Section 34, ‘relevant land’—

omit, insert—

‘a proposed allotment’.

PART 3—AMENDMENT OF LAND TITLE ACT 1994**Act amended in pt 3**

29. This part amends the *Land Title Act 1994*.

Amendment of s 122 (Lodging a caveat)

30. Section 122—

insert—

‘(3) To remove any doubt, it is declared that an interest in a lot does not include an interest in a proposed allotment under the *Land Sales Act 1984* that a person obtains when the person agrees to purchase the allotment under that Act.’

SCHEDULE**CONSEQUENTIAL AMENDMENTS**

section 2

AUCTIONEERS AND AGENTS ACT 1971**1. Section 75(1)(b), ‘relevant land’—***omit, insert—*

‘a proposed allotment’.

CANALS ACT 1958**1. Section 8A(1), ‘relevant land’—***omit, insert—*

‘proposed allotments’.

2. Section 8A(1), ‘which is’—*omit.*