



Western Australia

Sale of Land Amendment Act 2016

As at 22 Nov 2016

No. 38 of 2016

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Sale of Land Amendment Act 2016

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Western Australia

Sale of Land Amendment Act 2016

No. 38 of 2016

An Act to amend the *Sale of Land Act 1970*.

[Assented to 22 November 2016]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Sale of Land Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act amends the *Sale of Land Act 1970*.

4. Section 7 amended

In section 7(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$100 000.

5. Section 8 amended

In section 8 delete the Penalty and insert:

Penalty: a fine of \$100 000.

6. Section 11 amended

- (1) In section 11 insert in alphabetical order:

ADI means an authorised deposit-taking institution as defined in the *Banking Act 1959* (Commonwealth) section 5(1);

approved form means a form approved by the Registrar of Titles;

Australian legal practitioner has the meaning given in the *Legal Profession Act 2008* section 3;

deposit holder means a person —

- (a) who accepts or holds any deposit or other amount for and on behalf of one or more of the parties to a contract for the sale of land; and
- (b) who is any of the following —
 - (i) an Australian legal practitioner;
 - (ii) a real estate agent;
 - (iii) a settlement agent;

future lot contract means an executory contract for the sale and purchase of one or more lots to be created by subdivision where the vendor is a person —

- (a) who is not the proprietor of the lot or lots to which the contract relates; but
- (b) who will become, or will be entitled to become, the proprietor of that lot or those lots;

real estate agent means a person who is licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

Registrar of Titles means the person designated for the time being as the Registrar of Titles under the *Transfer of Land Act 1893* section 7;

settlement agent means a person who is licensed as a settlement agent under the *Settlement Agents Act 1981*;

vendor's condition has the meaning given in section 13B(1);

working day means a day other than a Saturday, a Sunday or a public holiday.

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- (2) In section 11 delete the definition of *lot* and insert:

lot has the meaning given in the *Planning and Development Act 2005* section 4 except that, for the purposes of this Part, it includes —

- (a) a lot in relation to a strata scheme as defined in the *Strata Titles Act 1985*; and
 - (b) a lot re-subdivided from lots or common property, or lots and common property, by the registration of a plan of re-subdivision under the *Strata Titles Act 1985* section 8; and
 - (c) an area of land represented, by or on behalf of any person attempting to promote the sale of that area of land, to be an area of land that will constitute a lot in a proposed subdivision;
- (3) In section 11 in the definition of *proprietor* delete “1893; and” and insert:

1893;

- (4) In section 11 in the definition of *sell* delete “meanings.” and insert:

meanings;

7. Section 13 amended

- (1) In section 13(1):
- (a) delete “5” (1st occurrence) and insert:

one

(b) delete “2” (1st occurrence) and insert:

one

(2) In section 13(1) delete paragraph (c).

(3) In section 13(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$100 000.

(4) In section 13(2) delete “Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5.” and insert:

Registrar of Titles.

8. Sections 13A to 13I inserted

After section 13 insert:

13A. Relationship between section 13 and sections 13B to 13D

Despite section 13, a person may sell one or more lots under a future lot contract as long as sections 13B to 13D are complied with.

13B. Requirement for future lot contract to include vendor’s condition

(1) A future lot contract must include the condition (the *vendor’s condition*) that before the close of the period specified in subsection (2), the vendor will become, or

will be entitled to become, the proprietor of the lot or lots to which the contract relates.

- (2) The period referred to in subsection (1) is —
 - (a) the period of 6 months beginning with the day on which the future lot contract is executed by the parties or, if the parties execute the contract on different days, the later of those days; or
 - (b) any other period that the parties may specify in the future lot contract or in a variation to that contract as the applicable period for the purposes of subsection (1).
- (3) If a future lot contract does not include the vendor's condition required under subsection (1) —
 - (a) the contract is illegal and void; and
 - (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
 - (i) any deposit or other amount paid by the purchaser under the contract; and
 - (ii) if applicable, any interest accrued on the deposit or other amount.
- (4) For the purposes of subsection (1), a vendor is entitled to become the proprietor of the lot or lots to which the future lot contract relates if the vendor is entitled to be registered as proprietor of that lot or those lots under one or more registrable instruments or under one or more applications made under the *Transfer of Land Act 1893* which have been lodged with the Registrar of Titles.
- (5) An instrument or application that was at the relevant time lodged as described in subsection (4) but was defective is to be taken to give as good an entitlement

to be registered as proprietor as it would give had there been no defect in the instrument or application if —

- (a) the instrument has subsequently been registered or the application granted without having been returned by the Registrar of Titles or having been withdrawn from the registration process; or
 - (b) the Registrar of Titles certifies in writing that the defect was not of a substantial nature and that it has been remedied.
- (6) A vendor who enters into a future lot contract that does not include the vendor's condition required under subsection (1) commits an offence.

Penalty for this subsection: a fine of \$100 000.

13C. Requirement for future lot contract to include warning

- (1) A future lot contract must include a warning that contains a statement to the effect that the vendor is not the proprietor of the lot or lots to which the contract relates.
- (2) The warning required under subsection (1) must be in the approved form.
- (3) If a future lot contract does not include the warning required under subsection (1) —
 - (a) the contract is illegal and void; and
 - (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
 - (i) any deposit or other amount paid by the purchaser under the contract; and
 - (ii) if applicable, any interest accrued on the deposit or other amount.

- (4) A vendor who enters into a future lot contract that does not include the warning required under subsection (1) commits an offence.

Penalty for this subsection: a fine of \$100 000.

13D. Requirement for future lot contract to provide that deposit or other amount payable by purchaser must be paid to deposit holder

- (1) A future lot contract must provide that any deposit or other amount payable by the purchaser under the contract must be —
- (a) paid by the vendor to a deposit holder specified in the contract within 2 working days after receipt of the payment from the purchaser; and
 - (b) held by the deposit holder on trust for the person entitled to receive it under the contract.
- (2) If a future lot contract does not include the provision required under subsection (1) —
- (a) the contract is illegal and void; and
 - (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
 - (i) any deposit or other amount paid by the purchaser under the contract; and
 - (ii) if applicable, any interest accrued on the deposit or other amount.

13E. Obligations relating to deposit or other amount payable under future lot contract

- (1) A vendor must pay to the deposit holder specified in a future lot contract any deposit or other amount paid by the purchaser under the contract within 2 working days after receipt of the payment from the purchaser.

Penalty for this subsection: a fine of \$100 000.

- (2) If a vendor fails to comply with subsection (1), the purchaser may —
- (a) terminate the contract by notice in writing to the vendor; and
 - (b) recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
 - (i) any deposit or other amount paid by the purchaser under the contract; and
 - (ii) if applicable, any interest accrued on the deposit or other amount.
- (3) A deposit holder must —
- (a) operate a trust account in an ADI to which all deposits or other amounts paid to the deposit holder either directly by a purchaser or by a vendor under subsection (1) must be deposited; and
 - (b) arrange for the trust account to be audited when required under section 13F(1); and
 - (c) hold the amounts in the trust account on trust for the purchaser until —
 - (i) the right to recover the deposit or other amount arises under subsection (2)(b), section 13B(3)(b), 13C(3)(b), 13D(2)(b) or 13I(4); or
 - (ii) the settlement of the relevant future lot contract; or
 - (iii) the completion of the transfer of the lot or lots to which the relevant future lot contract relates; or

- (iv) the occurrence of any other circumstance that would entitle the vendor or purchaser to be paid the deposit or other amount under the relevant future lot contract.

Penalty for this subsection: a fine of \$100 000.

- (4) A deposit holder must repay the deposit or other amount if the right to recover the deposit or other amount arises under any of the provisions referred to in subsection (3)(c)(i).

Penalty for this subsection: a fine of \$100 000.

- (5) A deposit holder may deduct from any repayment to be made to the purchaser an amount due to the vendor under a future lot contract in respect of any period during which the purchaser was —
 - (a) in occupation of the lot or lots to which the future lot contract relates; or
 - (b) entitled to receive the rents and profits of that lot or those lots.

13F. Registrar of Titles may require audit of trust accounts

- (1) The Registrar of Titles may from time to time require an audit of a deposit holder's trust accounts for the purpose of determining compliance with the requirements in section 13E.
- (2) A deposit holder must comply with a requirement for an audit under subsection (1).
- (3) An audit under subsection (1) must be carried out by a person (whether in the public or private sector) who the Registrar of Titles considers to be suitably qualified for the purpose.

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- (4) If the deposit holder whose trust accounts are to be audited fails to arrange for the audit, then the Registrar of Titles may —
- (a) engage a person (whether in the public or private sector) who the Registrar of Titles considers to be suitably qualified to carry out the audit; and
 - (b) require the deposit holder or any other person to provide access to the deposit holder's trust accounts and associated records for the purposes of the audit or, if access is refused within a reasonable time, apply to the Court for an order requiring access; and
 - (c) recover from the deposit holder the costs incurred by the Registrar of Titles in relation to the audit (including the costs of an application, if required, for an order under paragraph (b)).

13G. All reasonable endeavours must be made to satisfy vendor's condition

- (1) A vendor and, if applicable, a purchaser must make all reasonable endeavours to ensure that the vendor can satisfy the vendor's condition in a future lot contract.
- (2) Without limiting subsection (1), the vendor must make all reasonable endeavours before the expiry of the period specified in section 13B(2) to —
 - (a) obtain the necessary regulatory approvals for the subdivision or proposed subdivision; and
 - (b) create and lodge the necessary plans for the subdivision or proposed subdivision.
- (3) The vendor must give the purchaser reasonable information about the steps taken by or on behalf of the vendor to satisfy the vendor's condition within a

reasonable time after receipt of a written request for the information from the purchaser.

- (4) Despite any agreement to the contrary, the provisions of subsections (1) to (3) must be taken to form part of every future lot contract.

13H. Consequences if vendor's condition is satisfied

- (1) This section applies if the vendor's condition in a future lot contract is satisfied.
- (2) If this section applies —
 - (a) the vendor must give the purchaser notice in writing that the vendor's condition has been satisfied; and
 - (b) any deposit or other amount paid by the purchaser under the contract may be applied in accordance with the law.
- (3) The notice required under subsection (2)(a) must be given within 10 working days after the date on which the vendor's condition is satisfied.
- (4) If the vendor fails to give the notice required under subsection (2)(a) within the time specified in subsection (3), the vendor's condition is taken not to have been satisfied.

13I. Consequences if vendor's condition is not satisfied or is taken not to have been satisfied

- (1) If a vendor's condition in a future lot contract is not satisfied —
 - (a) the purchaser may terminate the contract by notice in writing to the vendor; or

- (b) the vendor may terminate the contract by notice in writing to the purchaser but only if the vendor has complied with section 13G.
- (2) If the vendor's condition is taken not to have been satisfied under section 13H(4), the purchaser may terminate the contract by notice in writing to the vendor.
- (3) To avoid doubt, nothing in this section confers on the vendor the right to terminate a future lot contract if the vendor's condition is taken not to have been satisfied under section 13H(4).
- (4) If the contract is terminated under subsection (1)(a) or (b) or subsection (2), the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
 - (a) any deposit or other amount paid by the purchaser under the contract; and
 - (b) if applicable, any interest accrued on the deposit or other amount.

9. Section 14 amended

- (1) In section 14(1):
 - (a) delete “5” and insert:

one
 - (b) delete “2” and insert:

one

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- (2) In section 14(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$100 000.

- (3) In section 14(2) delete paragraph(a).

- (4) In section 14(2)(b)(ii) delete “(within the meaning of that term in the *Legal Profession Act 2008* section 3)”.

10. Section 16 amended

In section 16 delete the Penalty and insert:

Penalty: a fine of \$100 000.

11. Section 17 amended

In section 17(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$100 000.

12. Section 18 amended

In section 18 delete the Penalty and insert:

Penalty: a fine of \$100 000.

13. Section 19B amended

In section 19B(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$100 000.

14. Part VII inserted

After section 23 insert:

Part VII — Transitional provisions for *Sale of Land Amendment Act 2016***24. Transitional provisions for *Sale of Land Amendment Act 2016***

(1) In this section —

amendment Act means the *Sale of Land Amendment Act 2016*;

commencement day means the day on which sections 6 to 8 of the amendment Act come into operation;

future lot contract has the meaning given in section 11 (as amended by the amendment Act);

post-commencement future lot contract means a future lot contract entered into on or after the commencement day;

pre-commencement future lot contract means a future lot contract entered into before the commencement day.

(2) Subject to section 13, a pre-commencement future lot contract continues in effect as if the amendment Act had not been enacted.

(3) Sections 13A to 13I (as inserted by the amendment Act) apply to every post-commencement future lot contract.

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