

POOL SAFETY CERTIFICATES

What is a Pool?

A swimming pool is any excavation or structure capable of being filled with water to a depth of 300mls or more including a pool, spa pool, tub or wading pool, but generally does not include a fish pond, dam, water tank, water course, spa bath in a bathroom (unless continually filled with 300mls or more of water) or birthing pool.

What is a Pool Safety Certificate?

A pool safety certificate is a Certificate issued by a licensed or authorised inspector under the *Building Act 1975*.

An Inspector can be found on-line on the Department of Infrastructure and Planning website or by [clicking here](#).

All the relevant forms are available on the Department of Infrastructure and Planning website or by [clicking here](#) including the:

- Form 36 Notice of No Pool Safety Certificate; and
- Form 23 Pool Safety Certificate.

Who has to get a Pool Safety Certificate?

- All pool owners by the 30 November 2015 unless the property is sold or leased in the meantime;
- The owner of a dwelling house with a pool before the house is rented to a tenant;
- All Buyers of a dwelling house with a pool if the Seller does not have a Pool Safety Certificate within 90 days of settlement.

Does it apply to all Swimming Pools?

The regime applies to all swimming pools but it draws a distinction between a non-shared pool (e.g. a pool on private land with a house or a private pool forming part of a lot in a body corporate or private spa bath) and a shared pool (e.g. a pool on scheme land in a body corporate for use by all the residents and not just one lot owner).

For a shared pool the obligation to obtain the Pool Safety Certificate is on the body corporate and the cost of obtaining the Certificate will be shared by all unit owners by way of body corporate levies.

Selling a Property with a Pool

Sellers should obtain a Pool Safety Certificate prior to listing the house for sale.

If the Seller has a pool safety certificate then this can be disclosed on the Contract and handed over at settlement.

The Buyer will have no right to terminate the Contract.

If there is no current Pool Safety Certificate then the Seller must disclose that on the Contract and is obliged under Section 16 of the *Building Regulations 2006* to give the Buyer a Form 36 – Notice of No Pool Safety Certificate.

If a Pool Safety Certificate is not in effect for a shared pool then the Form 36 must be given to the Buyer and the body corporate.

Any Form 36 issued must also be given to the Pool Safety Certificate Registrar.

If the Seller does not comply with these obligations a maximum penalty of \$16,500 applies.

Buying a Property with a Pool

If the Seller does not disclose in the Contract that a Pool Safety Certificate is in effect then the Buyer must at the Buyer's own cost obtain a Pool Safety Certificate.

If the Certificate is not obtained by the Pool Safety Inspection Date then either the Buyer or the Seller may terminate the Contract.

If the pool safety inspector will not issue the Certificate until rectification works are completed and the Seller refuses to meet those costs then Buyer must decide whether to terminate the Contract or settle the Contract. If the Buyer settles the Contract the Buyer becomes responsible at its costs to obtain the Pool Safety Certificate within 90 days from settlement.

If the Buyer does not obtain the Certificate then penalties apply.

If the Buyer wants to rent the property after settlement the Buyer cannot do so until the Pool Safety Certificate has been obtained.

New Pools

All new pools require a building approval and the building certifier must follow prescribed rules including the issue of the Pool Safety Certificate.

Obligations after a Sale

- **Non-Shared Pool**

The Buyer of a property with a non-shared pool must ensure that a current Pool Safety Certificate has been issued at settled or is obtained within 90 days of settlement.

This is the Buyer's absolute responsibility.

- **Shared Pool**

The owner of a shared pool (usually the body corporate) must, if a current Pool Safety Certificate has not issued, must obtain a Pool Safety Certificate by the later of 90 days of the settlement of the 1st unit sold or 1 June 2011 for a shared pool situated on land for short term accommodation (i.e. motel, hotel and backpackers hostel) and for any other shared pool (e.g. residential body corporate) 1 December 2012.

- **Current Pool Safety Certificate**

A Pool Safety Certificate will remain valid for 1 year for a shared pool and 2 years for a non-shared pool. The Pool Safety Certificate doesn't have to be renewed on expiry but a new certificate will be needed if the property is sold or let if the Certificate isn't current.

Register

A Pool Safety Register has been established to maintain a record of Pools and Pool Safety Certificates.

The Register can be searched on-line on the Department of Infrastructure and Planning website or by [clicking here](#) to ensure the accuracy of information given by the Seller on the Contract. The search is free.

Owners must register their pools (whether or not a current Pool Safety Certificate is in effect) by 4 May 2011 or a \$2,000 penalty will apply.

Owning a Property With a Pool

If you own a property with a pool you must:

- register the pool by 4 May 2011;
- not rent the property to a new tenant without getting a Pool Safety Certificate;
- disclose on any Contract whether a current Pool Safety Certificate is in effect; and
- obtain a Pool Safety Certificate for a non-shared pool by 30 November 2015 or the special dates for a shared pool.