

Leasing a property with a pool

Information for landlords, tenants and property managers

Swimming pools should be fun. Prior to the introduction of the pool safety laws, drowning was one of the leading causes of death in Queensland for children aged under five. Supervising young children, teaching them to swim at a young age and effective pool fencing can save lives.

Pools affected by the laws

The pool safety laws apply to pools associated with houses, townhouses, units, hotels, motels, backpacker hostels, homestay accommodation and caravan parks (class 1–4 buildings).

Spas and portable pools that are capable of being filled with 300 millimetres or more of water, have a volume of 2,000 litres or more or a filtration system, are covered by the pool safety standard. Bathroom spas that are used as baths and emptied after use are not included.

Owners of these pools have until 30 November 2015 to ensure that their pool complies with the pool safety standard or earlier if they sell or lease their property before this time.

A pool safety certificate, which certifies that the pool barrier complies with the pool safety standard, is only required when selling or leasing a property.

Lease arrangements

The date for obtaining a pool safety certificate depends on whether the pool is a shared or a non-shared pool.

What is a lease?

A 'lease' in this context includes any agreement under which a person gives someone else a right to occupy premises in exchange for money or other valuable consideration. The agreement may be in writing, oral or implied.

Non-shared pools

If a pool is only accessible to residents of one dwelling such as a private house or private spa on a unit balcony, it is a non-shared pool.

The owner of a non-shared pool must ensure a pool safety certificate is in effect for the pool before entering into a new or renewed lease for a property.

Shared pools

If residents of two or more dwellings can use a pool (for example, in a residential unit complex, motel or caravan park), it is a shared pool.

If there is a pool safety certificate in effect for a shared pool, the owner leasing a property which has the use of a shared pool (e.g. a unit), must give a copy of the certificate to the person who will be the tenant.

If there is no certificate in effect for a shared pool, the owner of the property being leased must give a *Form 36—Notice of no pool safety certificate*, to the person who will be the tenant, to the body corporate, and to the Department of Housing and Public Works before entering the lease.

A Form 36 advises that no pool safety certificate is currently in effect. The body corporate then has 90 days to obtain a pool safety certificate for the pool.

A phase-in period applies if the building is not used solely for short-term accommodation (e.g. holiday letting). For leases entered into after 1 September 2012, the body corporate has 90 days to obtain a pool safety certificate.

Pool safety certificates

How do I get a pool safety certificate?

Only a pool safety inspector who is licensed by the Pool Safety Council can issue a pool safety certificate. If you have any doubt about whether a person is a licensed pool safety inspector, you should ask to see their pool safety inspector licence. You can also check their licence on the pool safety register.

The pool safety register provides a list of all licensed pool safety inspectors and is available at www.hp.w.gov.au/PoolSafetyRegister.aspx. The register includes inspector contact details and displays the local government areas in which they work.

You can also use the register to check if a pool safety certificate is in effect for a pool. You can search the register by property address or lot/plan number.

For recently built pools, a *Form 17—Final inspection certificate* or a *Form 11—Certificate of classification*, given by the building certifier can be used as a pool safety certificate for one year from its date of issue for a shared pool and two years for a non-shared pool. However, this only applies if the certificate was given against the current pool safety standard.

A Form 17 may also be given by a building certifier – and used instead of a pool safety certificate – where a barrier for an existing pool is replaced or sufficiently altered and inspected by a building certifier. However, it is important to note that either a pool safety inspector or a building certifier may inspect a pool barrier and a building certifier is only required if a building development approval was mandatory for that particular structure. For further information, please refer to the *Dividing fences which also serve as a pool barrier* fact sheet.

Does the pool safety certificate need to be displayed?

A pool safety certificate for a shared pool must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool. The owner of a non-shared pool does not need to display their pool safety certificate.

Where there is a shared pool, does every unit owner need to have the pool inspected separately?

No. The owner of the shared pool (usually the body corporate) needs to obtain the certificate and make it available to unit owners.

Does the tenant need to receive a copy of the pool safety certificate?

The owner of a non-shared pool does not need to give their tenants a copy of the pool safety certificate.

For shared pools, a unit owner must provide either a copy of the certificate or a *Form 36—Notice of no pool safety certificate*, to the prospective tenant.

Is a pool safety certificate required when a fixed term lease becomes a periodic agreement?

Under Queensland's residential tenancy laws, if a new fixed term lease agreement is not signed or extended, it automatically becomes a periodic agreement. The pool safety laws do not require a pool safety certificate to be obtained in this scenario.

However, if the original terms and conditions of the agreement change at any point (e.g. a rent increase), a pool safety certificate will need to be obtained before entering into the new or renewed lease.

Is a new pool safety certificate required before each new lease?

No. There is no limit to the number of times a property can be leased during the currency of the certificate.

Non compliance

What happens if the pool doesn't comply at inspection?

If a pool safety inspector inspects a pool and is not satisfied that it complies, they must issue a *Form 26—Pool safety non conformity notice*. It is important to note that the issue of a Form 26 for a non-shared pool does not change the obligation to obtain a pool safety certificate before entering a lease for the property.

Form 26 advises the pool owner how their pool does not comply and what work needs to be done to make it comply.

Some pool safety inspectors are licensed to carry out certain minor repairs. Pool owners can also carry out some repair and maintenance work. The *Building Regulation 2006* sets out the repairs and maintenance work pool owners can carry out themselves and minor repairs that appropriately licensed pool safety inspectors can carry out. Examples of repairs and maintenance work that pool owners can carry out can be found in the *Tips to make your pool safer* fact sheet available at www.hpw.qld.gov.au/PoolSafetyFactSheets.aspx.

If the pool owner wishes to have the pool re-inspected within three months of issue of the Form 26, they must re-engage the original inspector. It is an offence for the pool owner to ask a different inspector to re-inspect the pool within this period without written approval from the Pool Safety Council.

In some circumstances, such as where the inspector becomes ill, the pool owner can apply to the Pool Safety Council to allow another inspector to re-inspect the pool within the three month period.

If the original inspector who issued the Form 26 does not receive a request from the pool owner to re-inspect the pool within three months, the inspector must notify the local government. The local government can then take any necessary enforcement action to ensure the pool complies with the relevant standard.

If the pool was built before 1 December 2009, there has been no sale or lease and there has been no certificate previously in effect for the pool, an earlier standard may still apply to the pool. In this case, the local government will enforce compliance with the standard that was in force when the pool was constructed. However, given that the pool owner will have to comply with the current standard by 30 November 2015 (or earlier if the property is sold or leased), pool owners are encouraged to take the opportunity when altering their pool barriers to upgrade to the current standard.

If a pool owner disagrees with a Form 26, they may appeal to a Building and Development Dispute Resolution Committee established under the *Sustainable Planning Act 2009*.

What are the penalties for non compliance?

Penalties of up to \$18,150 for individuals and \$90,750 for corporations apply for non compliance with the pool safety laws. On the spot fines of \$1,760 for individuals and \$5,280 for corporations can also apply.

Enforcement action is taken by local governments and, in some cases, by the Department of Housing and Public Works.

If a real estate agent collects a commission in connection with a new lease in relation to a non-shared pool where no pool safety certificate has been obtained for the pool, they may face disciplinary proceedings under the *Property Agents and Motor Dealers Act 2000*.

Occupiers of a property, including tenants, must ensure that gates and doors giving access to a pool are kept securely closed at all times when they are not in use. Occupiers and tenants should also ensure there are no climbable objects, such as pot plants or loose outdoor furniture that would allow children to access the pool. Tenants who install their own pool, such as a portable pool or spa, must ensure the pool complies with the pool safety standard and obtain all required building approvals. Permission from the property owner may also be required.

Dividing fences and pool owners

In many cases, using a common boundary fence is the most efficient way to comply with the pool safety requirements.

Provisions in the *Building Act 1975* and the *Neighbourhood Disputes Resolution Act 2011*, facilitate a common-sense approach to fencing work such as encouraging agreements between neighbours and 'like for like' replacement of fences.

A fact sheet for pool barriers on common boundaries is available at www.hpw.qld.gov.au/PoolSafetyFactSheets.aspx.

For more information

visit: www.hpw.qld.gov.au/PoolSafety

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