

# Conveyancing (Sale of Land) Regulation 2010

[2010-473]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Biosecurity Act 2015 No 24](#) (not commenced)
  - [Taxation Administration Amendment \(Collection and Disclosure of Information to Commonwealth\) Act 2016 No 29](#) (not commenced — to commence on 1.7.2016)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Conveyancing (Sale of Land) Regulation 2010



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Regulation .....	4
2 Commencement .....	4
3 Definitions .....	4
<b>Part 2 Contracts for sale of land</b> .....	5
4 Documents to be attached to contract .....	5
5 Implied term of contract for all contracts .....	6
6 Implied term of contract if strata units bought off the plan .....	6
7 Implied term of contract for land and house packages .....	6
8 Implied warranty .....	7
9 Prescribed persons and bodies .....	7
10 Exemptions .....	7
<b>Part 3 Cooling off period for sale of residential property</b> .....	7
Note .....	7
11 Form of statement relating to cooling off period .....	7
12 Exemptions .....	8
<b>Part 4 Options for purchase of residential property</b> .....	8
13 Implied warranty .....	8
14 Form of statement relating to cooling off period .....	8
15 Exemptions .....	9
<b>Part 5 Purchasers' remedies</b> .....	9

16 Purchaser may rescind contract or option .....	9
17 Method of rescinding contract or option .....	10
18 Effect of notice of rescission of contract or option .....	10
<b>Part 6 Miscellaneous</b> .....	<b>11</b>
19 Application of amendments to this Regulation .....	11
20 Savings .....	11
<b>Schedule 1 Prescribed documents</b> .....	<b>11</b>
<b>Schedule 2 Prescribed terms</b> .....	<b>15</b>
<b>Schedule 3 Prescribed warranties</b> .....	<b>16</b>
<b>Schedule 4 Exempt contracts, options and land</b> .....	<b>20</b>
<b>Schedule 5 Forms</b> .....	<b>22</b>

# Conveyancing (Sale of Land) Regulation 2010



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Regulation 2010*.

### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Conveyancing (Sale of Land) Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**building certificate** means a certificate issued in accordance with sections 149A–149E of the *Environmental Planning and Assessment Act 1979*.

**Crown land** has the same meaning as in the *Crown Lands Act 1989*.

**folio** means a folio of the Register maintained by the Registrar-General under the *Real Property Act 1900*.

**property certificate**, in relation to land, means any of the following:

- (a) a copy of the folio for the land,
- (b) a computer folio certificate (within the meaning of the *Real Property Act 1900*) in relation to the land,
- (c) a document that contains the information contained in the folio for the land, being a document that is certified (by or on behalf of the person to whom the information has been provided) as having been provided in accordance with section 96B (2) of the *Real Property Act 1900*,

but does not include a certificate of title.

**recognised sewerage authority** means a public authority or local authority that provides a sewage disposal service and includes:

- (a) Hunter Water Corporation, and
- (b) Sydney Water Corporation, and
- (c) a licensed network operator under the [Water Industry Competition Act 2006](#).

**section 149 certificate** means a certificate issued under section 149 (2) of the [Environmental Planning and Assessment Act 1979](#), but does not include a certificate referred to in clause 279 (2) of the [Environmental Planning and Assessment Regulation 2000](#).

**section 603 certificate** means a certificate issued under section 603 (3) of the [Local Government Act 1993](#).

**the Act** means the [Conveyancing Act 1919](#).

- (2) In this Regulation, a reference to a document of any kind includes a reference to a copy of the document.
- (3) In this Regulation, a reference to a folio for land or a computer folio certificate in relation to the land means, in the case of a lease folio, the head title and each lease folio.

**Note—**

In such a case the head title and each lease folio would need to be attached to the contract for the sale of land.

- (4) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Contracts for sale of land**

### **4 Documents to be attached to contract**

- (1) For the purposes of section 52A (2) (a) of the Act, the prescribed documents that the vendor under a contract for the sale of land must attach to the contract are such of the documents specified in Schedule 1 (or such parts of those documents) as are relevant to:
  - (a) the land the subject of the contract for sale, or
  - (b) in the case of land comprising one or more lots in a proposed plan of subdivision, the land from which the lot is to be created.
- (2) In the case of land comprising one or more lots in a plan of subdivision that was registered before the date of the contract, the section 149 certificate referred to in

Schedule 1 may relate either to those lots or to the land from which those lots have been created, whether or not it also relates to other land.

#### **5 Implied term of contract for all contracts**

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 1 of Schedule 2 is prescribed for a contract for the sale of land.

#### **6 Implied term of contract if strata units bought off the plan**

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 2 of Schedule 2 is prescribed for a contract for the sale of land if:

- (a) the contract is a contract for the sale of a lot in a strata plan or a proposed strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and
- (b) the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and
- (c) pursuant to section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate (within the meaning of that Act) will be required to be issued before occupation or use of the building, or part of the building, of which the lot and access to the lot form part, may commence, and
- (d) the contract does not expressly provide that the vendor and the purchaser agree that:
  - (i) an occupation certificate will not be issued before completion in relation to the building, or part of the building, of which the lot and any part of the building reasonably necessary for access to the lot form part, and
  - (ii) occupation or use of the lot will not commence before the occupation certificate is issued.

#### **7 Implied term of contract for land and house packages**

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 3 of Schedule 2 is prescribed for a contract for the sale of land if:

- (a) the contract is a contract for the sale of a lot in a deposited plan, or in a proposed deposited plan, and
- (b) the contract provides for:
  - (i) the erection by the vendor of a dwelling-house on the lot, or
  - (ii) the sale of a dwelling-house already erected on the lot, and
- (c) pursuant to section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate (within the meaning of that Act) will be required to be issued

before occupation or use of the dwelling-house may commence.

## **8 Implied warranty**

For the purposes of section 52A (2) (b) of the Act, the prescribed warranty for a contract for the sale of land is the warranty set out in Part 1 of Schedule 3.

## **9 Prescribed persons and bodies**

For the purposes of section 52A (3) of the Act, the following persons and bodies are prescribed as persons and bodies whose certificates and documents may be relied on by a purchaser under a contract for the sale of land in the same way as they may be relied on by the vendor to whom they were issued:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,
- (c) East Australian Pipeline Pty Limited (ACN 064 629 009),
- (d) Jemena Gas Networks (NSW) Ltd (ACN 003 004 322).

## **10 Exemptions**

- (1) For the purposes of section 52A (5) (b) of the Act, section 52A (2) of the Act does not apply to the following:
  - (a) the contracts listed in Parts 1 and 2 of Schedule 4,
  - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1) (b), section 52A (2) of the Act does apply to the following contracts in relation to land comprising an estate or interest referred to in item 15 of Schedule 4:
  - (a) a contract for the sale of land by a mortgagee exercising a power of sale,
  - (b) a contract for the sale of the equity of redemption in land.

## **Part 3 Cooling off period for sale of residential property**

### **Note—**

Division 8 of Part 4 of the [Conveyancing Act 1919](#) allows, with certain exceptions, a cooling off period in respect of contracts for the sale of residential property.

## **11 Form of statement relating to cooling off period**

- (1) For the purposes of section 66X (1) of the Act, Form 1 in Schedule 5 is the prescribed form of statement relating to the cooling off period.
- (2) The statement must be legibly printed so that:

- (a) the words shown in bold face capital letters in Form 1 are printed in bold face capital letters at least 14 point, and
- (b) the rest of the statement is printed in bold face figures and letters at least 10 point.

## **12 Exemptions**

- (1) For the purposes of section 66Y (3) of the Act, Division 8 of Part 4 of the Act does not apply to the following:
  - (a) the contracts referred to in Parts 1 and 3 of Schedule 4,
  - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1) (b), Division 8 of Part 4 of the Act does apply to the following contracts in relation to land comprising an estate or interest referred to in item 15 of Schedule 4:
  - (a) a contract for the sale of residential property by a mortgagee exercising a power of sale,
  - (b) a contract for the sale of the equity of redemption in residential property.

## **Part 4 Options for purchase of residential property**

### **13 Implied warranty**

For the purposes of section 66ZA (1) of the Act, the warranty set out in Part 2 of Schedule 3 is deemed to be included in an option to purchase residential property to which are attached:

- (a) a proposed contract for the sale of the land, and
- (b) the documents prescribed under section 52A (2) (a) of the Act.

**Note—**

Those documents are set out in clause 4 and Schedule 1.

### **14 Form of statement relating to cooling off period**

- (1) For the purposes of section 66ZH (1) of the Act, Form 2 in Schedule 5 is the prescribed form relating to the cooling off period.
- (2) The statement must be legibly printed, so that:
  - (a) the words shown in bold face capital letters in Form 2 are printed in bold face capital letters at least 14 point, and
  - (b) the rest of the statement is printed in bold face figures and letters at least 10



point.

## **15 Exemptions**

- (1) For the purposes of section 66ZK (3) of the Act, Division 9 of Part 4 of the Act does not apply to the following:
  - (a) the options referred to in Part 4 of Schedule 4,
  - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1) (b), Division 9 of Part 4 of the Act does apply to the following options in relation to land comprising an estate or interest referred to in item 15 of Schedule 4:
  - (a) an option to purchase residential property granted by a mortgagee exercising a power of sale,
  - (b) an option to purchase the equity of redemption in residential property.

## **Part 5 Purchasers' remedies**

### **16 Purchaser may rescind contract or option**

- (1) The purchaser under a contract for the sale of land may rescind the contract:
  - (a) for the vendor's failure to attach to the contract the documents prescribed under section 52A (2) (a) of the Act, or

**Note—**

Those documents are set out in clause 4 and Schedule 1.

- (b) for breach of the warranty section 52A (2) (b) of the Act.

**Note—**

The warranty is set out in clause 8 and Part 1 of Schedule 3.

- (2) The purchaser under an option to purchase residential property to which a proposed contract for the sale of the land concerned is attached may rescind the option for breach of the warranty prescribed under section 66ZA (1) of the Act.

**Note—**

The warranty is set out in clause 13 and Part 2 of Schedule 3.

- (3) A purchaser may not rescind a contract or option under subclause (1) (b) or (2) unless:
  - (a) the breach constitutes a failure to disclose to the purchaser the existence of a matter affecting the land, and
  - (b) the purchaser was unaware of the existence of the matter when the contract or

option was entered into, and

(c) the matter is such that the purchaser would not have entered into the contract or option had he or she been aware of its existence.

(4) A purchaser may not rescind a contract or option under subclause (1) (b) or (2) for breach of that part of the warranty set out in item 1 (d) or 3 (d) of Schedule 3 if a building certificate in respect of the building (or part of the building) to which the warranty relates has been issued since the date of the contract or option concerned.

#### **17 Method of rescinding contract or option**

(1) A purchaser rescinds a contract for the sale of land by notice in writing served on the vendor:

(a) if the purchaser's right to rescind arises from the vendor's failure to attach the prescribed documents—at any time within 14 days after the making of the contract, unless the contract has been completed, and

(b) if the purchaser's right to rescind arises from the vendor's breach of the prescribed warranty—at any time before the contract is completed.

(2) A purchaser rescinds an option to purchase residential property by notice in writing served on the vendor at any time before the option is exercised or ceases to be exercisable, whichever is the earlier.

(3) A notice under this clause may be served as provided by section 170 of the Act or in such other manner as the contract or option may specify.

#### **18 Effect of notice of rescission of contract or option**

(1) A notice of rescission of a contract for the sale of land rescinds the contract as from the time the contract was made and, in that event, the deposit and any other money paid by the purchaser to the vendor under the contract are to be refunded.

(2) A notice of rescission of an option to purchase residential property rescinds the option as from the time the option was granted and, in that event, any consideration paid in relation to the option, and any deposit paid in relation to the purchase of the property, are to be refunded.

(3) The rescission of the contract or option does not render the vendor liable to pay to the purchaser, or the purchaser liable to pay to the vendor, any sum for damages, costs or expenses.

(4) However, subclause (3) does not affect any liability under the contract or option in relation to:

(a) the payment of damages, costs or expenses arising out of a breach of any term or

condition of the contract or option, or

- (b) the payment of damages, costs or expenses arising out of a breach of any warranty contained in the contract or option (other than a warranty prescribed by clause 8 or 13), or
- (c) an adjustment between the vendor and a purchaser who has received the benefit of possession of the land, or
- (d) the reimbursement of the purchaser for expenses incurred by the purchaser in complying with the requirements of any order, direction or notice in connection with the land.

## Part 6 Miscellaneous

### 19 Application of amendments to this Regulation

An amendment to this Regulation does not affect a contract for the sale of land, or an option to purchase residential property, made before the commencement of the amendment.

### 20 Savings

The *Conveyancing (Sale of Land) Regulation 2005* continues to apply to a contract for the sale of, and an option to purchase, residential property entered into on or after 1 September 2005, and before the repeal of that Regulation, as if that Regulation were still in force.

## Schedule 1 Prescribed documents

(Clause 4)

- 1 A section 149 certificate (unless the land is not within a local government area) for the lot.

**Note—**

If the sale relates to more than one lot in a strata plan a single section 149 certificate may be attached.

- 2 A diagram for the land from a recognised sewerage authority (if available from the authority in the ordinary course of administration) that purports to show the location of the authority's sewer in relation to the land.
- 3 If the contract relates to land under the provisions of the *Real Property Act 1900* (including any land that is the subject of a qualified or limited folio, but not including land the subject of a contract referred to in items 6–13):
  - (a) a property certificate, and
  - (b) a copy of a plan for the land issued by the Land and Property Management Authority or any of its predecessors (except in the case of land that is the subject of a limited folio).
- 4 Copies of all deeds, dealings and other instruments lodged or registered in the Land and Property

Management Authority that are shown on the property certificate for the lot and that create or purport to create any of the following interests that burden or benefit or purport to burden or benefit the land or any part of the land, together with copies of all memoranda referred to in any such instrument:

- (a) easements,
- (b) profits à prendre,
- (c) restrictions on the use of land,
- (d) positive covenants imposed under Division 4 of Part 6 of the [Conveyancing Act 1919](#).

**5** If the contract relates to land that comprises or includes a lot in a strata scheme (within the meaning of the [Strata Schemes Management Act 1996](#)) or a lot under a community plan, precinct plan or neighbourhood plan (within the meaning of the [Community Land Development Act 1989](#)), copies of all deeds, dealings and other instruments lodged or registered in the Land and Property Management Authority that are shown on the property certificate for the relevant common property or association property and that create or purport to create any of the following interests that burden or benefit or purport to burden or benefit the common property or association property or any part of that property, together with copies of all memoranda referred to in any such instrument:

- (a) easements,
- (b) profits à prendre,
- (c) restrictions on the use of land,
- (d) positive covenants imposed under Division 4 of Part 6 of the [Conveyancing Act 1919](#).

**6** If the contract relates to land that comprises or includes a lot as defined in the [Strata Schemes \(Freehold Development\) Act 1973](#):

- (a) a property certificate for the lot and the common property, and
- (b) a copy of the strata plan that shows the lot, and
- (c) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the [Strata Schemes Management Act 1996](#) applies.

**7** If the contract relates to land that comprises or includes a lease of a lot as defined in the [Strata Schemes \(Leasehold Development\) Act 1986](#):

- (a) a property certificate for the leasehold estate in the lot, and
- (b) a property certificate for the leasehold estate in the common property, and
- (c) a copy of the strata plan that shows the lot, and
- (d) a copy of the registered lease of the lot and the registered lease of the common property, and
- (e) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the

*Strata Schemes Management Act 1996* applies.

- 8** If the contract relates to land that comprises or includes a lot in a development scheme within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, a copy of the strata development contract or strata development statement.
- 9** If the contract relates to land that is subject to a strata management statement registered under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, a copy of the strata management statement, as in force for the time being.
- 10** If the contract relates to land that comprises or includes a lot (within the meaning of the *Strata Schemes (Freehold Development) Act 1973*) that is within a community scheme (within the meaning of the *Community Land Development Act 1989*):
  - (a) the documents prescribed by item 6, and
  - (b) a property certificate for the community property and any precinct property, and
  - (c) a copy of the community plan, including a copy of the community management statement and any development contract registered with the community plan, and
  - (d) if applicable, a copy of the precinct plan, including a copy of the precinct management statement and any development contract registered with the precinct plan.
- 11** If the contract relates to land that comprises or includes a lot that forms part of a community scheme within the meaning of the *Community Land Development Act 1989*:
  - (a) a property certificate for the lot and community property, and
  - (b) a copy of the community plan incorporating the lot, including a copy of the community management statement and any development contract registered with the community plan.
- 12** If the contract relates to land that comprises or includes a lot that forms part of a precinct scheme within the meaning of the *Community Land Development Act 1989*:
  - (a) a property certificate for the lot, precinct property and community property, and
  - (b) a copy of the precinct plan incorporating the lot, including a copy of the precinct management statement and any development contract registered with the precinct plan, and
  - (c) a copy of the community plan incorporating the precinct scheme to which the lot relates, including a copy of the community management statement and any development contract registered with the community plan.
- 13** If the contract relates to land that comprises or includes a lot that forms part of a neighbourhood scheme within the meaning of the *Community Land Development Act 1989*:
  - (a) a property certificate for the lot and neighbourhood property, and
  - (b) a copy of the neighbourhood plan incorporating the lot, including a copy of the neighbourhood management statement and development contract, and

- (c) if the neighbourhood scheme in which the lot is situated is within a community scheme:
  - (i) a property certificate for the community property and any precinct property, and
  - (ii) a copy of the community plan, including a copy of the community management statement and any development contract registered with the community plan, and
  - (iii) if applicable, a copy of the precinct plan, including a copy of the precinct management statement and any development contract registered with the precinct plan.

**14** If the contract relates to land that is subject to a building management statement registered under the *Conveyancing Act 1919*, a copy of the building management statement, as in force for the time being.

**14A**

- (1) If the contract relates to land on which there is situated a swimming pool within the meaning of the *Swimming Pools Act 1992* to which that Act applies, a copy of one of the following in respect of the swimming pool:
  - (a) a valid certificate of compliance issued under section 22D of that Act,
  - (b) a relevant occupation certificate within the meaning of that Act and evidence that the swimming pool is registered under Part 3A of that Act,

**Note—**

A relevant occupation certificate is an occupation certificate issued under the *Environmental Planning and Assessment Act 1979* that is less than 3 years old and that authorises the use of the swimming pool.

- (c) a valid certificate of non-compliance issued under clause 18BA of the *Swimming Pools Regulation 2008*.
- (2) This item does not apply if:
  - (a) the contract relates to a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 1996*) or in a community scheme (within the meaning of the *Community Land Development Act 1989*) and that strata or community scheme comprises more than 2 lots, or
  - (b) the contract is an off the plan contract (within the meaning of section 66ZL of the *Conveyancing Act 1919*).

**15** A notice in or to the effect of each of the following notices (unless the notice is printed in the contract), being a notice that is legibly printed, in bold type, with the words shown in capital letters in the heading being at least 14 point, and the rest of the notice printed in letters at least 10 point:

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

### **WARNING—SMOKE ALARMS**

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the [Environmental Planning and Assessment Act 1979](#). It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

### **WARNING—SWIMMING POOLS**

An owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the [Swimming Pools Act 1992](#). Penalties apply. Before purchasing a property on which a swimming pool is situated, a purchaser is strongly advised to ensure that the swimming pool complies with the requirements of that Act.

## **16 (Repealed)**

## **Schedule 2 Prescribed terms**

(Clauses 5-7)

### **1 Objections and requisitions**

Nothing in this contract or any other agreement prevents the purchaser, expressly or by implication, from making any objection, requisition or claim that the purchaser would otherwise be entitled to make in respect of:

- (a) any encroachment onto any adjoining land by any building or structure on the land, other than a dividing fence as defined in the [Dividing Fences Act 1991](#), or
- (b) any encroachment onto the land by any building or structure on any adjoining land, other than a dividing fence as defined in the [Dividing Fences Act 1991](#),

unless the encroachment is disclosed and clearly described in this contract and the contract contains an express term precluding the purchaser from making such an objection, requisition or claim.

### **2 Strata units bought off the plan**

- (1) The vendor must serve, at least 14 days before completion, an occupation certificate within the meaning of the [Environmental Planning and Assessment Act 1979](#) (being an interim occupation certificate or a final occupation certificate) in relation to the building, or part of the building, of which the lot and access to the lot form part.
- (2) For the purposes of this clause, the part of a building comprising access to a lot is any part of the building reasonably necessary for access to the lot.
- (3) The purchaser does not have to complete earlier than 14 days after service of the certificate.

### 3 Land and house packages

- (1) The vendor must serve, at least 14 days before completion, an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* (being an interim occupation certificate or a final occupation certificate) in relation to the dwelling-house.
- (2) The purchaser does not have to complete earlier than 14 days after service of the certificate.

## Schedule 3 Prescribed warranties

(Clauses 8 and 13)

### Part 1 Warranty in contract

- 1 The vendor warrants that, as at the date of the contract and except as disclosed in the contract:
  - (a) the land is not subject to any adverse affectation, and
  - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
  - (c) the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*, and
  - (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has been issued in relation to the building or structure since the matter arose, and
  - (e) if the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 to the *Conveyancing Act 1919*, no amount is payable under section 88F of that Act in respect of the land, and
  - (f) the land is not subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993*.
- 2 For the purposes of this warranty:
  - (a) land is **subject to an adverse affectation** if anything listed in Part 3 of Schedule 3 to the *Conveyancing (Sale of Land) Regulation 2010* applies in respect of the land, and
  - (b) an authority or other entity has a proposal in respect of land if, and only if, the authority or entity has issued a written statement the substance of which is inconsistent with there being no proposal of the authority or entity in respect of the land, and
  - (c) without limiting the way in which it may otherwise be disclosed, an adverse affectation is taken to be disclosed in a contract if any of the following is attached to the contract:
    - (i) a document stating or illustrating the effect of the adverse affectation,



- (ii) a document, issued by an authority or other entity, to the effect that the authority or entity, or another authority or entity, has a proposal referred to in Part 3 of that Schedule,
  - (iii) a copy of the order, notice, declaration or other instrument giving rise to the adverse affectation,
  - (iv) a copy of the page of the Gazette in which the order, notice, declaration or other instrument giving rise to the adverse affectation was published, and
- (d) **upgrading or demolition order** means any of the following:
- (i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) or (d) relating to that order,
  - (ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,
  - (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order,
  - (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order, and
- (e) without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* by attaching a section 603 certificate relating to the land to the contract.

## Part 2 Warranty in option

- 3 The vendor warrants that, as at the date of the option and except as disclosed in the option:
- (a) the land is not subject to any adverse affectation, and
  - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
  - (c) the section 149 certificate attached to the option specifies the true status of the land the subject of the option in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*, and
  - (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has been issued in relation to the building or structure since the matter arose, and
  - (e) if the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 to the *Conveyancing Act 1919*, no amount is payable under section 88F of that Act in respect of the land, and
  - (f) the land is not subject to an annual charge for the provision of coastal protection services under

the *Local Government Act 1993*.

**4** For the purposes of this warranty:

- (a) land is **subject to an adverse affectation** if anything listed in Part 3 of Schedule 3 to the *Conveyancing (Sale of Land) Regulation 2010* applies in respect of the land, and
- (b) an authority or other entity has a proposal in respect of land if, and only if, the authority or entity has issued a written statement the substance of which is inconsistent with there being no proposal of the authority or entity in respect of the land, and
- (c) without limiting the way in which it may otherwise be disclosed, an adverse affectation is taken to be disclosed in an option if any of the following is attached to the option:
  - (i) a document stating or illustrating the effect of the adverse affectation,
  - (ii) a document, issued by an authority or other entity, to the effect that the authority or entity, or another authority or entity, has a proposal referred to in Part 3 of that Schedule,
  - (iii) a copy of the order, notice, declaration or other instrument giving rise to the adverse affectation,
  - (iv) a copy of the page of the Gazette in which the order, notice, declaration or other instrument giving rise to the adverse affectation was published, and
- (d) **upgrading or demolition order** means any of the following:
  - (i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) or (d) relating to that order,
  - (ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,
  - (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order,
  - (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order, and
- (e) without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* by attaching a section 603 certificate relating to the land to the option.

### **Part 3 Adverse affectations**

- 5** A proposal for re-alignment, widening or siting, or alteration of the level, of a road or railway by the Roads and Traffic Authority of New South Wales, Rail Corporation New South Wales, Transport Construction Authority or Rail Infrastructure Corporation.
- 6** A proposal by or on behalf of the Minister for Education and Training to acquire the whole or any

part of the land.

- 7** A proposal of any of the following to acquire any right or interest in the whole or any part of the land:
  - (a) an energy distributor (within the meaning of the *Energy Services Corporations Act 1995*),
  - (b) an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*,
  - (c) the lessor of a transacted distribution system or transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015*.
- 8** An interim heritage order, a listing on the State Heritage Register or another order or notice under the *Heritage Act 1977*.
- 9** A proposal to acquire any right or interest in the whole or any part of the land by reason of the *Pipelines Act 1967*.
- 10** A proposal of the New South Wales Land and Housing Corporation to acquire the whole or any part of the land.
- 11** A notice to or claim on the vendor by any person, evidenced in writing, in relation to:
  - (a) any common boundary or any boundary fence between the land and adjoining land, or
  - (b) any encroachment onto any adjoining land by any building or structure on the land, or
  - (c) any encroachment onto the land by any building or structure on any adjoining land, or
  - (d) any access order, or any application for an access order, under the *Access to Neighbouring Land Act 2000*.
- 12** A order under section 124 of the *Local Government Act 1993* to demolish, repair or make structural alterations to a building which has not been fully complied with.
- 13** A notice to or claim on the vendor by any person, evidenced in writing, in relation to a failure or alleged failure to comply with a positive covenant imposed on the land under Division 4 of Part 6 of the *Conveyancing Act 1919*.
- 14** If the contract relates to land that comprises or includes a lease of a lot as defined in the *Strata Schemes (Leasehold Development) Act 1986*—a notice to or claim on the vendor by the lessor, evidenced in writing, in relation to a breach or alleged breach of a term or condition of the lease of the lot concerned.
- 15** A right of way under section 164 or 211 of the *Mining Act 1992*.
- 16** A licence under section 13A of the *Water Act 1912*.
- 17** Any of the following under the *Stock Diseases Act 1923*:
  - (a) an order under section 7 (1) (c) or (d), 8 (1) (a), (b), (c1), (d) or (f), 13 (2) or 17 (1),

- (b) a notice under section 8 (1) (c),
- (c) a declaration under section 10, 11A or 15 (1),
- (d) an undertaking under section 11,
- (e) an appointment under section 12 (a),
- (f) an authorisation under section 12 (b).

**18** Any of the following under the *Stock (Chemical Residues) Act 1975*:

- (a) an order under section 5 (1) (d) or (e) (ii) or 11 (1) or (2),
- (b) a requirement under section 7 (1) or 8 (1),
- (c) an undertaking under section 7A (1),
- (d) a restriction or prohibition under section 12 (1).

**19** Any of the following under the *Soil Conservation Act 1938*:

- (a) a requirement under section 15A (1) or 22 (1),
- (b) a notification under section 17 (1) or (7) (c) or 20 (1),
- (c) a notice under section 18.

**20** Any direction under section 38 (1) of the *Native Vegetation Act 2003*.

**21** Any application for an order under the *Trees (Disputes Between Neighbours) Act 2006* or any order under that Act that requires work to be carried out in relation to a tree if that work has not been carried out fully in compliance with that order.

**22** Any order under Part 4D of the *Coastal Protection Act 1979* in relation to temporary coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the council is satisfied that such an order has been fully complied with.

## Schedule 4 Exempt contracts, options and land

(Clauses 10, 12 and 15)

### Part 1

(Clauses 10 and 12)

- 1** A contract between the owners of adjoining land that will result solely in an adjustment of a common boundary.
- 2** A contract between co-owners providing for the acquisition by one or more co-owners of the whole or any part of the share or interest of any other co-owner.
- 3** A contract for the sale of land to the Roads and Traffic Authority of New South Wales, if the

contracts are expressed to be for the acquisition of land for the purposes of the *Roads Act 1993*.

- 4 A contract for the sale of the fee simple in the whole or part of any land the subject of a lease, holding or tenure under the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901* to the holder of the lease, holding or tenure.
- 5 A contract for the sale of whole or part of a former public road pursuant to section 42 or 43 of the *Roads Act 1993*.
- 6 A contract for the sale of land entered into by the Minister administering the *Environmental Planning and Assessment Act 1979* pursuant to section 9 of that Act.
- 7 A contract for the sale of land entered into by the Minister administering the *Heritage Act 1977* pursuant to section 112 of that Act.

## Part 2

(Clause 10)

- 8 A contract arising from the exercise of an option to purchase land where the option is contained in a will or a lease.
- 9 A contract arising from the exercise of any other option to purchase land (not being an option that is void under section 66ZG of the Act) so long as the proposed contract, and the documents (referred to in clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act, are attached to the option.
- 10 A contract arising from the exercise of any other option to purchase land other than residential land where the terms of the option prevent its exercise earlier than 3 months after the date on which it is granted.

## Part 3

(Clause 12)

- 11 A contract arising from the exercise of an option to purchase land where the option is contained in a will or a lease.
- 12 A contract arising from the exercise of any other option to purchase land (not being an option that is void under section 66ZG of the Act) so long as the proposed contract, and the documents (referred to in clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act, are attached to the option.

## Part 4

(Clause 15)

- 13 An option to purchase, the exercise of which would result in a contract listed in Part 1 of this

Schedule.

**14** An option to purchase land where the option is contained in a will or a lease.

## Part 5

(Clauses 10, 12 and 15)

**15** An estate or interest created by or subsisting by virtue of a mortgage, easement, permissive occupancy or profit à prendre.

**16** An interest under a lease, other than:

- (a) a lease having an unexpired term (including any term for which the lease may be renewed at the option of the lessee) of more than 25 years, or
- (b) a lease of Crown land having an unexpired term of more than 5 years, or
- (c) a perpetual lease or other lease from the Crown having an unexpired term of more than 5 years, or
- (d) a lease of a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*.

## Schedule 5 Forms

(Clauses 11 and 14)

### Form 1 Cooling off period (purchaser's rights)

- 1** This is the statement required by section 66X of the *Conveyancing Act 1919* and applies to a contract for the sale of residential property.
- 2** The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.
- 3** There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act, or
  - (b) if the property is sold by public auction, or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in, or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
- 4** A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

### Form 2 Cooling off period (purchaser's rights)

- 1** This is the statement required by section 66ZH of the *Conveyancing Act 1919* and applies to an option to purchase residential property.
- 2** The purchaser may rescind the option at any time before 5 p.m. on the fifth business day after the day on

which the option was granted, **EXCEPT** in the circumstances listed in paragraph 3.

**3** There is **NO COOLING OFF PERIOD**:

(a) if, at or before the time the option is granted, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF of the Act, or

(b) if the option is granted on the same day as the property was offered for sale by public auction but passed in.

**4** A purchaser exercising the right to cool off by rescinding the option will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser in relation to the option or from any deposit paid in relation to the purchase of the property and the purchaser is entitled to a refund of any balance.