

LEASING A PROPERTY WITH A POOL FOR LANDLORDS, TENANTS AND PROPERTY MANAGERS:

EFFECTIVE MAY 2021

Swimming pools should be fun, but before the pool safety laws were introduced, drowning was one of the leading causes of death in Queensland for children aged under 5.

Supervising young children, teaching them to swim at a young age, and effective pool fencing can save lives.

Is my pool affected by the laws?

Pool safety laws apply to pools on properties where there are houses, townhouses, units, hotels, motels, backpacker hostels, homestay accommodation and caravan parks (class 1–4 buildings).

They cover spas and portable pools capable of being filled to a depth of 300 millimetres or more of water. They don't cover portable wading pools that are 300mm deep if they have a volume of no more than 2,000 litres and no filtration system. Bathroom spas used as baths and emptied after use are not included.

Since 1 December 2015 every pool owner is responsible for ensuring their pool complies with the pool safety standard.

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' is an agreement where a person gives another person 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 (e.g. 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 (e.g. 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 (e.g. within a unit block), the property owner must give a copy of the certificate to the prospective tenant.

If there is no certificate in effect for a shared pool, the property owner must give a Form 36 – Notice of no pool safety certificate to the tenant, body corporate, and Queensland Building Construction Commission (QBCC) before entering the lease.

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

Pool safety certificates

How do I get a pool safety certificate?

Only a pool safety inspector – licensed by QBCC – can issue a pool safety certificate. If you need to find a licensed pool safety inspector or check the inspector's licence, the pool safety register provides a list of all licensed pool safety inspectors and is available at qbcc.qld.gov.au

The register includes inspector contact details and the local government areas in which they work.

You can also use the pool safety 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 1 year from its date of issue for a shared pool, and 2 years for a non-shared pool.

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.

Either a pool safety inspector or a building certifier may inspect a pool barrier, but the building certifier is only required if a building development approval was mandatory for that particular structure.

For further information, refer to "Using dividing fences 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 displayed at 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 a 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 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. In this case, the pool safety laws don't require a pool safety certificate to be obtained.

However, if the original terms and conditions of the agreement change at any point (e.g. a rent increase), a pool safety certificate needs 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. Note that 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.

A Form 26 advises the pool owner how their pool does not comply and details the work needed to 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.

If the pool owner wants the pool re-inspected within 3 months of the Form 26 being issued, 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 QBCC.

In some circumstances (e.g. if the inspector becomes ill), the pool owner can apply to QBCC for another inspector to re-inspect the pool within the 3-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 3 months, the inspector must notify the local government. The local government can then take any necessary enforcement action to ensure the pool complies.

If the pool was built before 1 December 2009, there has been no sale or lease, and there has been no certificate in effect previously 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 Development Tribunal established under the *Planning Act 2016*.

What are the penalties for non-compliance?

Penalties apply for noncompliance with the pool safety laws; up to a maximum penalty of 165 penalty units.

Enforcement action is taken by local governments, and in some cases, by QBCC. If a real estate agent collects a commission for a new lease with 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 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.

Refer to pool barriers on common boundaries for more information.

Need more information?

Visit qbcc.qld.gov.au or call QBCC on 139 333 and we can assist you.