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## **CONNOLLY SUTHERS LAWYERS LEGAL ALERT GLOBAL WARMING - ITS EFFECT ON YOU AND THE SALE OF YOUR HOME - SUSTAINABILITY DECLARATIONS**

### **A new Law that Residential Property Owners in Queensland must comply with**

The Queensland Government has amended the Building Act with effect from 1 January 2010.

The amendments comprise new laws requiring owners of houses, residential units, or townhouses to complete a **Sustainability Declaration** before they place their properties on the market for sale.

### **What is a Sustainability Declaration?**

A Sustainability Declaration is a document that you, as a property owner, are required to complete and give to prospective Buyers before they agree to buy your property. As we understand it the declaration is intended to identify your property's environmental credentials. For example you must identify if you have solar or wind power sources and if so are required to disclose their generating capacity.

The form of the declaration is published on the Department of Infrastructure and Planning web site : [www.dip.qld.gov.au/sustainable-housing/sustainability-declaration.html](http://www.dip.qld.gov.au/sustainable-housing/sustainability-declaration.html) .

You will not be alone if you feel that you cannot understand some of the questions or the rationale behind the requirement to complete the declaration in circumstances where neither you nor your interested buyer have any clear understanding of its meaning and intent.

However, the requirement to complete the declaration is not something you can opt out of if you find it all too hard. In short, there are consequences.

The sustainability declaration is a compulsory checklist which is intended to identify a property's environmental and social sustainability features, with the key areas being energy, water, safety and access.

### **What property does it apply to?**

All residential homes, units and townhouses.

### **Who has to comply with the new laws?**

All owners of these residential properties

### **When do you have to complete a Sustainability Declaration?**

As soon as a property owner 'proposes to' sell or appoints an agent to sell their property, the Seller must prepare and sign a Sustainability Declaration.

### **What happens if you do not know the answers or cannot understand the questions in the declaration?**

The law provides that you will have satisfied the requirement to complete a Sustainability Declaration if you complete the declaration **to the best of your ability and knowledge**.

Just ignoring the question because you do not understand it may not be enough to excuse you from compliance with this new law. You are, however, excused from this requirement if you 'can not find out the information' or have 'no technical knowledge about the feature'.

#### **What happens if you do not complete a declaration?**

You can be fined for non-compliance with the new law. There are maximum penalties of up to \$2,000 for those who refuse to complete the declaration.

#### **What happens if the declaration is false or misleading?**

If a false or misleading declaration is given to a Buyer, the Seller is liable to compensate the Buyer for any loss or expense.

The new law makes it clear that if there is a deficiency in a declaration it does not give a Buyer a right (outside the terms of the contract) to terminate the contract.

#### **What should you do?**

Be very careful in completing any Sustainability Declaration. If you are about to put your residential property on the market be aware that you must first complete a Sustainability Declaration . Seek professional advice before doing so if you are at all uncertain about the meaning and effect of any of the questions.

It has been suggested in some quarters that you can simply fail to answer questions as you see fit and just sign what is in effect a blank declaration. We do not agree with that given the express requirement that you complete the declaration to the best of your ability and knowledge.

Real Estate Agents are cautioned not to complete the declarations for their Sellers as to do so could expose them to the possibility of being joined in compensation claims by Buyers who say that they have suffered loss and expense from false or misleading information in a Sustainability Declaration.

Please call Brendan Gaeta on 47715664 or email him at [brendan.gaeta@connollysuthers.com.au](mailto:brendan.gaeta@connollysuthers.com.au) if you require more information about this important change in the law.

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