

31 August 2022

Property Law Act Review
Strategic Policy and Legal Services
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

Re: SCA (Qld) Submission Seller Disclosure

Dear Property Law Review team,

Introduction

As of late 2020, there were over 500,000 lots in more than 50,000 community title schemes across Queensland. It is a growing sector, and with the pressure on housing lots and increased focus on sustainable, affordable living in urban centres, it is growing at a rapid rate.

SCA (Qld) is the peak industry body representing Queensland's strata sector. Our 1,200 individual and corporate members represent some 70% of lots in Queensland and help oversee, advise and manage assets worth tens of billions of dollars.

SCA (Qld) is in an enviable position to understand the sector from a broad array of viewpoints owing to our diverse membership which includes strata managers, community titles schemes with committee members acting as nominees and lot owners as individuals. We also represent service providers to the strata industry including specialist insurers, painting suppliers, energy suppliers, solicitors, accountants, water and plumbing providers, banks, elevator maintenance professionals, cleaning providers, surveyors, valuers, glaziers, IT providers and pool servicing and maintenance providers. In preparation of this submission, the broadest possible spectrum of the industry was consulted, including lot owners.

Submission Summary

Efficient consumer protection is best achieved through summary disclosure that is accessible and easily read by a lay person. SCA (Qld) reiterates our belief that excessive disclosure confuses rather than informs; can frequently lead to dispute, and that summary disclosure is the best way of transferring critical information.

SCA (Qld) Queensland has informed its submission into seller disclosure through the lens of behavioural science, particularly with reference to specific research regarding standard form contracts¹ ("SFC Paper") and commensurate disclosure in the sale of complicated products including financial services² ("Disclosure Paper").

SCA (Qld) supports a succinct, efficient seller disclosure regime that discloses only the most critical matters in an easy fashion to the buyer.

¹ Shmuel, B., 2007. Behavioral Science and Consumer Standard Form Contracts. Louisiana Law Review, 68(1).

² Australian Securities and Investment Commission, 2019. Disclosure: Why it shouldn't be the default. Australian Securities and Investment Commission.

Factors to Consider

SCA (Qld) is of the view that large volumes of disclosure do not lead to more informed consumers. There is direct evidence in both the SFC paper and the Disclosure Paper that are worth examining. As the Disclosure Paper notes, disclosure does not solve the complexity that is inherent in a transaction, nor the emotional dimensions of significant financial transactions.

Research cited by the Disclosure Paper³ noted that the ability of consumers to make good decisions was severely compromised by having to consider more than two or three factors. When you consider the multitude of factors a person is required to process by the draft certificate at present, particularly noting their complexity, it is clear such a plethora of factors will impair decision making and information absorption.

Realistically, the primary concerns of a buyer will be costs and the actual property they own as well as perhaps some basic information about body corporate living. Beyond this, any excess information will only serve to confuse.

The Draft Certificate Broadly

As part of our submission, SCA (Qld) attaches a version of the draft certificate with our proposed changes clearly identified with red strike through. We will talk to why we propose them throughout the submission.

At present, typically most disclosure documents are prepared using software and signed off by the seller. SCA (Qld) believes that whilst this document is more in depth than previous versions which are generated through various software programs, there should be little disruption in adjusting these programs to ensure they function appropriately with a new certificate.

SCA (Qld) believes many of the large boxes which take up significant amount of space in the document should be reduced to feasibly shrink the document to an overall length of four pages. We feel that a shorter document is more likely to encourage a closer inspection by a prospective purchaser. Replacing these boxes with a QR code or a succinct directive to seek further information if required would be best.

It is important to remember that strata owners are often first home buyers, or downsizers who have only ever lived in detached housing. Ensuring buyers get the very basics of their obligations for body corporate living in a digestible form can help prevent complicated and difficult problems later. Minimising the scope of the document will enhance buyer engagement with it and go a long way to achieving this aim.

Sellers Statutory Warranties

The Disclosure Paper notes that one of the issues with large and excessive disclosure documents is that each new piece of information competes for the attention of sellers, which diminishes their capacity to analyse fully the most important or critical pieces. Without factoring in the sale process, there is already a multitude of information available other than a short explanation of the statutory warranty regime. It is likely that given the ramifications of the breaches have severe consequences, most buyers would have to seek legal advice if a breach of one of the statutory warranties were to occur.

³ P Lunn, M Bohacek, J Somerville, AN Choidealbha & F McGowan, PRICE Lab: An investigation of consumers' capabilities with complex products, report, Economic & Social Research Institute, May 2016.

Short-Term Letting

For the reasons noted above and considering the widespread community awareness of the practice of short-term letting, we consider this to be superfluous and unlikely to help buyers make an informed decision. The legality of short-term letting is best informed by appropriate legislative change, or if necessary, enforcement of local laws by relevant Councils.

Regulation Modules

There is little utility in explaining the existence of each of the Regulation Modules. Noting the applicable Regulation Module of the scheme may be of some utility, however the existence of an explanation of each of the Modules will largely be superfluous information.

Insurance

The insurance section of the document is another section that could be reduced or completely removed. Insurance is near universally procured by the body corporate manager and all schemes are obliged to insure the common property to full replacement value. It is unlikely that this information is necessary or worthwhile for an owner to know in such detail. Removing or substantially reducing this section would enhance the readability and usefulness of the certificate as it stands.

Insurance is complex and confusing to begin with, and one of the many positives of Queensland strata legislation is that it is mandatory to insure the property to the full replacement value of the common property. There is no need to disclose the details of this insurance.

If there is reference to be made to insurance in the document, what would be helpful is a brief summary of the difference between body corporate insurance and the need for contents insurance in particular. A direction to seek further advice on this should also be included, encouraging purchasers to get appropriate information around the nuances of these issues.

Office of the Commissioner

SCA (Qld) notes that our proposed changes would remove all references to the Office of the Commissioner for Body Corporate and Community Management. We believe a brief summary of the duties and functions of the Commissioner's Office, including dispute resolution and education services would be better.

Body Corporate Authority

The transaction of a lot within a community titles scheme is a contract between two parties. SCA (Qld) does not consider the body corporate, or the body corporate manager, should be the party signing off on the disclosure. Whilst the body corporate manager will inevitably be involved in the process, they should not be made party to the transaction nor held liable in any part of the transaction. We feel that given the seller is the party to the contract making the disclosure they should be the individual to sign off on it.

We are deeply concerned as an organisation about any attempts to make entities who are not the buyer or seller liable for, or parties to the conveyancing process. Fundamentally, this goes against the notion of privity of contract and will potentially create expensive litigation or legal issues. The seller should be obliged to sign off on the certificate, as it is them making the disclosure.

Body corporate managers should not be involved in the conveyancing process beyond getting the appropriate information for buyers and sellers. The conveyancing contract, and all legal obligations attached ought to be solely between the parties to the transaction.

The Conveyancing Process for Strata Generally

Many of the problems with respect of strata stem from a failure to promptly provide the Form 8 for updating of the body corporate roll. Up to date and timely records are critical to ensuring the efficient and effective management of body corporate affairs. This very basic process is often not performed in a conveyance - either the agent or solicitor does not inform the body corporate manager and the roll is left out of date. This relatively minor administrative error has been identified by several members of SCA (Qld) as being the genesis of many broader body corporate issues. We believe that whilst the overarching conveyancing process for strata lots is being considered, a legislative obligation must be imposed on the solicitor of one of the parties, or one of the parties (the party themselves if they choose to self-represent) to ensure the roll for the body corporate is updated. This would be helpful in solving many of the issues that develop within schemes, and enforces a process that should occur anyway as it has a penalty attached to it if it does not.

Conclusion

As outlined above, there are many deficiencies with disclosure and standard form contracts which will present themselves in the conveyancing process. Disclosure should focus primarily on costs and what the lot owner is purchasing in the first instance, as well as some very broad information about body corporate living.

It is important to note in closing that the Disclosure Paper identified that large disclosure documents tend not to be read; but also tend to enhance trust in conflicted advisers which is not ideal. Obviously, a seller and their agent have a material interest in the sale of the property. The agent is a conflicted adviser, and whilst we respect the rights of individuals to represent themselves and have agents represent their interest, a larger document is, according to the research, more likely to enhance trust in the representations of a real estate agent rather than encourage consumers to engage and examine their purchase decision.

Sincerely



Laura Bos (General Manager (SCA (Qld)))