



Changes to Property Transactions

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IMPORTANT CHANGES TO PROPERTY TRANSACTIONS

The Conveyancing (Legislation) Amendment Act 2018 introduces changes that will provide better protection for purchasers buying property off the plan and more flexibility to those using electronic land contracts and deeds.

Off the plan Contracts:

An off the plan contract is used to sell a property such as a strata unit without its own separate title, given the property does not exist at the time contracts are exchanged.

Off the plan contracts can be beneficial to both property developers and purchasers. For property developers, finance is generally dependent on the percentage of lots that have been pre-sold.

For purchasers, these off the plan contracts are a popular way to enter the property market. This is because the construction and settlement periods can take years, providing extra time for buyers to save funds required for settlement.

However, due to the very nature of the transactions, off the plan purchasers are particularly vulnerable to the actions of developers. The new laws aim to address this vulnerability.

While a commencement date for these provisions has not been confirmed, the key changes that will come into effect are:

- A new mandatory disclosure regime will require vendors for off the plan contracts to disclose crucial information in a disclosure statement and attach documents, including copies of the proposed plan, details of easements and covenants, proposed by-laws for strata properties, and a schedule of finishes where building work is required;
- If changes are made to a 'material particular' during development, the developer will be required to notify the purchaser. A change to a 'material particular' is a change that will negatively impact the use or enjoyment of the property. For example, this could be a decrease in size of the lot;
- A purchaser will be able to rescind the contract without penalty if they are materially prejudiced by a change to a material particular, and would not have entered into the contract had they known about this change. Alternatively, the purchaser may claim compensation but remain in the contract;
- At least 21 days prior to settlement, developers will need to provide purchasers a copy of the final registered plan;
- Following from the changes introduced in 2015 which prevented developers from using a sunset clause to terminate contracts without consent from the purchasers, the new laws expand this protection to cover other events that trigger the termination of contract (such as failure to issue the occupation certificate or to register the plan). Courts will now be able to award damages in some circumstances when the contracts are rescinded by



the Vendor; and

- The cooling off period for off the plan contracts is extended to 10 business days;

Electronic Land Transactions

The new provisions have removed some obstacles in the shift from the paper to electronic conveyancing process. Key developments introduced by the new legislation are:

- An amendment to the Conveyancing Act 1919 which confirms the traditional requirement for land contracts to be in writing can be satisfied electronically and land contracts can be formed electronically;
- Deeds can be signed and witnessed electronically;
- Where an instrument is lodged for registration, the supporting documents for that instrument may be signed electronically; and
- Notice under the Conveyancing Act 1919 can be served by email to an address specified by the person to be served.

If you would like to discuss this article, please do not hesitate to contact our Property Team on 9635 7966 or email info@matthewsfolbigg.com.au.