

Property Law changes to Off-the-Plan Contract

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As of 2 November 2015, property law in New South Wales has changed in relation to off-the-plan contracts, giving purchasers increased protection which make it harder for developers to enact sunset clauses to cancel contracts. This applies to all contracts for sale, even those already entered into.

A sunset clause is traditionally included in an off-the-plan contract in order to allow a buyer or developer to rescind if completion has been delayed. However, some developers have been using abusing these clauses, intentionally delaying a project in order to cancel existing contracts and then resell to new buyers at a higher price to reflect the current market.

With the Conveyancing Amendment (Sunset Clauses) Act 2015 introducing s66ZL into the Conveyancing Act, developers must now provide purchasers with written notice of their intention to rescind no later than **28 days before the sunset date and specify why they are proposing to rescind the contract and the reason for the delay in creating the subject lot.**

If the purchaser does not give consent, the developer may seek an order from the Supreme Court permitting the contract rescission under the sunset clause. The relevant factors the Supreme Court will take into account when deciding whether to make an order approving a developer's proposed rescission include the terms of the contract, whether the developer acted unreasonably or in bad faith, the reason for the delay, whether the lot has increased in value, and any other matter the court considers to be relevant.

If you have, or are considering, purchasing off-the-plan, contact one of the property lawyers at Matthews Folbigg who can provide you with the property law advice you need to ensure success on 02 9635 7966 or email info@matthewsfolbigg.com.au.

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