

The New Conveyancing (Sale of Land) Regulations 2019 (NSW)

Amongst the recent raft of changes to the residential building industry, on 1 December 2019 the *Conveyancing (Sale of Land) Regulations 2019 (NSW)* will commence with a view to providing greater protections to purchasers of residential property from off-the-plan contracts.

Buying a property “off-the-plan” essentially means that a purchaser is buying a property that has not yet been constructed. The contract will generally include a detailed description of the property and may include a copy of the draft strata plan, preliminary plans lodged with the local council and a list of finishes to be used in the property.

There are, of course, both advantages and disadvantages to buying off-the-plan. Advantages to the purchaser include buying a property at today’s prices and, often, at lower prices than the general market value of a “finished product”. On the flip side, disadvantages of buying off-the-plan include buying a property where the end product may differ from the draft plans included in the contract.

To make matters worse, unfortunately, there is no “standard” contract for sale for off-the-plan contracts and so these types of contracts can contain a number of unusual clauses. The major change in the *Conveyancing (Sale of Land) Regulations 2019 (NSW)*, in addition to increasing the cooling off period from 5 business days to 10 business days, is to provide some uniformity to off-the-plan contracts by requiring that they include specific disclosure statements in a standardised form.

A disclosure statement is essentially a one page summary of specific details and attaches certain documents required by the new regulations, which include a:

- draft plan of the property showing its lot number, location and area;
- draft floor plan and location plan of the property;
- any proposed bylaws, development contract (including strata development contract) and management statement; and
- schedule of finishes to be installed in the property.

Before a purchaser signs an off-the-plan contract, a disclosure statement must be attached to the contract and, failure to attach a disclosure statement, entitles the purchaser to “rescind” (or cancel) the contract within 14 days of signature date.

Further, if there is a change to a “material particular” of the property, the developer of the property must serve the purchaser with a “notice of changes” at least 21 days before completion of the off-the-plan contract. A “material particular” includes a change in the draft plan of the property, its draft by-laws, schedule of finishes, strata management statement and strata development contract.

Service of a “notice of change” may trigger a purchaser’s right to rescind the contract in 14 days or claim compensation (up to 2% of the purchase price) from the developer. However, the purchaser may only rescind if, as a result of the change in the “material particular”, the purchaser would have not entered into the off-the-plan contract and he or she would be materially prejudiced.

If you are buying off-the-plan or receive a “notice of changes”, you should seek advice on the contract and your rights. If you are selling by way of an off-the-plan contract, it is important that you reissue all contracts issued prior to 1 December 2019 with the new disclosure statements and prescribed documents. We have years of experience with off-the-plan contracts and dealing with residential property issues and are always happy to assist.

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