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PURCHASING OFF THE PLAN?

The new regulations of which you need to be aware

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On 1 December 2019 the Registrar General of New South Wales set out new regulations for off the plan contracts, implementing greater disclosure requirements for vendors.

What is an Off-The-Plan Contract?

Under the *Conveyancing Legislation Amendment Act 2018* an off the plan contract is defined as a contract for the sale of a residential lot, which at the time of entering into, has not been created.¹

New obligations

As a new requirement, a Disclosure Statement by the vendor must be attached to the contract. The Disclosure Statement is a single page which provides additional details of the expected purchase of property, such as the completion date, whether development approval has been obtained and when the expected settlement date may occur.

Furthermore, the cooling-off period for off-the-plan purchases has been increased from five business days to 10 business days.

In addition, the deposit must be held in a trust account throughout the contract period and cannot be released prior to settlement.



¹ *Conveyancing Legislation Amendment Act 2018*

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Disclosure Statement Requirements

A registered surveyor must provide a draft plan which must display the area and number of the proposed lot as well as any relevant information to determine the location of the lot, any potential easement or restriction to the land, future schedule of finishes, and a s 88B instrument (which is the document forming part of the deposited plan creating easements, covenants, restrictions on the land, etc) – where applicable.

Additional for Strata Schemes

Where the lot is part of a strata scheme, further requirements include a draft floor and location plan, (it is not necessary to provide the location of storage and parking areas for any strata lots), draft by-laws and management statement as per section 99 of the *Strata Schemes Development Act 2015* and draft building management statement (if applicable).

Additional for Community, Precinct or Neighbourhood Schemes

Where the lot is part of a community, precinct or neighbourhood scheme, further requirements include a draft detail, community, neighbourhood, precinct and location diagram, development contract, and draft building management statement (outlining how shared facilities are accessed, maintained and funded).

Consequences of no Disclosure Statement

If the off-the-plan contract does not have the preceding documents (being the Disclosure Statement, prescribed documents that apply and the draft plan) attached before the contract is signed, then within fourteen (14) days of exchange, the purchaser may rescind the contract.

Vendor's Obligations

Vendors are now obliged to disclose to the purchaser any changes that occur to the original plans during the developing process ('material particulars' by way of a *Notice of Changes approved form*). Importantly however, this does not include the following changes: amended street name or lot number, costs being allocated in relation to building or strata management statements and changes to the location or inclusion of parking areas for lots.

Developer's Obligations

It is the developer's obligation to ensure a final registered plan is provided to the purchaser at least 21 (twenty-one) days before settlement.

Purchaser's Rights to Rescind or Claim Compensation

Rescission of a contract may be applicable to a purchaser where no disclosure document was attached as set out above. Further, rescission or compensation may be applicable to a purchaser who can display that if changes of the material particulars were apparent at the time of entering the contract, that the particular

change in question would have resulted in the purchaser not entering into the contract. However, the change must be one that makes the purchaser materially prejudiced by the change.

Additionally, if the final registered plan that the developer provides to the purchaser displays any changes which materially impacts the purchaser, then the purchaser may be entitled to rescind, or, within fourteen (14) of being provided the registered plan claim compensation.

Amended Sunset Clause

The new amendments include the further developed definition of the sunset clause (which allows the parties to terminate an off-the-plan contract should a certain event, like the registration of the plan, not occur by a specified date) to capture other events which trigger termination of the contract, like the issue of an occupation certificate, and confirm the power of the courts to awarded damages in the event the contract is terminated under a sunset clause.²

How can JHK Legal help?

If you are thinking to purchase a property off-the-plan and would like to know what are your rights in light of the recent changes in the law, please contact our office on 02 8239 9600 or by email at sydney@jhklegal.com.au to discuss how we may be able to assist you.

Visit our Website [HERE](#) or click below to see our social media



² As per section 66ZS of the *Conveyancing Legislation (amendment Act 2018)* the Court may award damages in relation to sunset clauses.