



NSW: Off-the-plan contract reforms commence on 1 December 2019

Significant off-the-plan residential contract reforms commenced on 1 December 2019 as a result of amendments that were made to the Conveyancing Act 1919 and the Conveyancing (Sale of Land) Regulation 2017.

New disclosure obligations

Section 66ZM of the *Conveyancing Act 1919* ('the Act') will require a vendor under an off-the-plan contract to attach a Disclosure Statement in an approved form to the contract before it is signed by the purchaser.

The Disclosure Statement must include a copy of the draft plan of subdivision prepared by a registered surveyor and contain the following information regarding the lot being purchased off the plan:

- (a) the proposed lot number of the lot;
- (b) sufficient information to identify the location of the lot;
- (c) the area of the lot;
- (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme — the draft floor plan and draft location plan;
- (e) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme — the draft location diagram, draft detail plan and draft community, precinct or neighbourhood property plan;
- (f) the site of any proposed easement or profit à prendre affecting the lot, and,
- (g) the site of any proposed restriction on the use of land or positive covenant affecting only part of the lot.

The Disclosure Statement must also include the following documents:

- (a) any proposed schedule of finishes;
- (b) any instrument under Section 88B of the Act, ie proposed to be lodged with the draft plan;
- (c) if the contract relates to land that comprises or includes a lot in a proposed strata scheme — the draft by-laws;
- (d) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme — the draft management statement and the draft of any proposed development contract;



- (e) if the contract relates to land that comprises or includes a lot in a proposed development scheme — the draft strata development contract;
- (f) if the contract relates to land that comprises or includes a lot in a proposed strata scheme that relates to a part strata parcel and a strata management statement will be required under Section 99 of the *Strata Schemes Development Act 2015* for the registration of the strata plan — the draft strata management statement;
- (g) if the contract relates to land that will be subject to a building management statement under Division 3B of Part 23 of the Conveyancing Act — the draft building management statement.

New rescission rights

A purchaser will have three new rights of rescission as follows:

1. A failure to attach the Disclosure Statement and included documents will give the purchaser the right to rescind the contract within 14 days after the making of the contract.
2. The vendor must notify the purchaser at least 21 days before completion via a notice of changes in the approved form, if the vendor becomes aware the Disclosure Statement was inaccurate in relation to a “material particular” at the time the contract was signed, or has become inaccurate in relation to a “material particular” after the contract was signed.

New provisions in the Act and the Regulation to it, set out what is, and isn't, a “material particular”. A “material particular” includes a change to the draft plan, management or building statement, schedule of finishes, by-laws or an easement or covenant that will adversely affect the use of enjoyment of the lot, but does not include a change to the proposed lot number, the proposed street name, or a change to the location or area of the parking or storage area of the lot.

The purchaser will then have a right of rescission if the change is such that the purchaser:

- would not have entered into the contract had the purchaser been aware of the change, and
 - would be materially prejudiced by the change (Section 66ZO of the Act).
3. The purchaser will also have a right of rescission if, after receiving the registered plan and other documents, the disclosure statement includes any inaccuracy in relation to a material particular. Once again, it will need to be demonstrated that the purchaser would not have entered into the contract had they been aware of the change and they would be materially prejudiced by the change (Section 66ZP of the Act).

It should also be noted that the copy of the registered plan and documents will need to be given to the purchaser at least 21 days before completion of the contract.

New compensation rights

If a purchaser does not wish to exercise a rescission right outlined above, they may, as an alternative, claim compensation from the vendor of up to 2% of the purchase price.

The claim for compensation must be made before completion of the contract and no later than:



- (a) in the case of a right to rescind under Section 66ZO of the Act — 14 days after the purchaser receives the notice of changes, and
- (b) in the case of a right to rescind under Section 66ZP of the Act — 14 days after the purchaser receives the registered plan.

Changes to the cooling-off period

Currently, a 5 business days' cooling-off period applies to off the plan contracts for residential property. Under the new legislation the cooling-off period will be extended to 10 days for off-the-plan contracts.

If you or someone you know would like more information about an off the plan purchase, please contact our [accredited property law specialists, John Bateman or Michael Battersby](#) on 02 4731 5899 or email us at property@batemanbattersby.com.au.