



THE SALE OF LAND ACT IS SET TO CHANGE - HERE'S WHAT YOU NEED TO KNOW

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Legal Briefings - By **Jane Hodder, David Sinn, Jean Liu and Mackayla Hanney**

The Victorian Parliament has recently introduced a new bill which plans to restrict the use of sunset clauses in residential off the plan contracts, prohibit certain rent-to-buy agreements and terms contracts and altering the offence provisions for vendor disclosure obligations. If passed, the Bill will make several amendments that are likely to affect your developments.

WHAT AMENDMENTS ARE BEING PROPOSED?

If the Bill is passed without any changes to its current form, the Bill will seek to make a number of amendments to the Act, notably:

- addition of new definitions;
- amendments to disclosure obligations;
- restriction of the use of sunset clauses in certain off-the-plan contracts;
- prohibition of the use certain types of rent-to-buy arrangements; and
- prohibition of the use of certain types of terms contracts.

NEW DEFINITIONS

The Bill proposed to insert a number of definitions into the Act, notably: rent-to-buy agreement; off-the-plan contract; residential off-the-plan contract; sunset clause and sunset date.

CHANGES TO DISCLOSURE OBLIGATIONS

Currently, under the Act, it is an offence to 'fraudulently' conceal a material fact about a property with the intention of inducing any person to buy land. The Bill proposes to amend this, so that a person will instead commit an offence when they 'knowingly' conceal such a material fact with the relevant intention.

It is yet to be determined how, if at all, this change would affect the vendor disclosure obligations under the Act.

Additionally, the Bill proposes to allow the Director of Consumer Affairs Victoria to make guidelines to assist in understanding what kinds of material facts should be disclosed. At this stage, there is no indication of what these guidelines will entail. We will continue to monitor and provide an update when the guidelines become available.

RESTRICTION TO THE USE OF SUNSET CLAUSES

The Bill proposes to restrict developers' ability to exercise termination rights under a sunset clause in residential off-the-plan contracts. This restriction will operate even if the delay is through no fault of the developer (for example, delays as a result of contractor availability).

The new provisions do not restrict termination by a developer under a sunset clause if, by the sunset date, the relevant plan of subdivision has not yet been registered, or an occupancy permit has not been issued.

'Sunset dates' will be defined by reference to a date by which the plan of subdivision must be registered or the occupancy permit issued.

A vendor will be prohibited from rescinding a residential off-the-plan contract under a sunset clause, unless the vendor has first obtained written consent from affected purchasers or an order from the Supreme Court.

This consent requirement will apply to Vendors wanting to terminate under a sunset clause after 23 August 2018.

In seeking the purchaser's written consent, the vendor must provide at least 28 days' notice, and detail to the purchaser:

- the reason why the vendor is proposing to rescind the contract; and
- the reason for the delay in registering the plan of subdivision or the issuing of the occupancy permit, and
- that the purchaser is not obliged to consent to the proposed rescission.

If a vendor was to alternatively seek an order from the Supreme Court, the Act will provide for how the Vendor can seek this order and the factors the Supreme Court must take into account in determining whether it would be 'just and equitable' to grant an order permitting the vendor to rescind the contract.

Importantly, vendors will be required to include a description of these new vendor obligations in a sunset clause in any residential off-the-plan contract.

RENT-TO-BUY ARRANGEMENTS

The Bill proposes to make it an offence to knowingly sell, broker, arrange or advertise residential land under a rent-to-buy arrangement, unless the arrangement:

- complies with new regulations the Governor in Council may make; or
- involves the Director of Housing; or
- involves a registered housing association.

The Bill proposes to define 'rent-to-buy arrangements' as those that provide a person with a right to purchase residential land (or an obligation on that person to purchase residential land), and, that person pays rent (or another amount) to occupy that residential land for more than 6 months before they can exercise the right to purchase that land.

There is no word yet on what these regulations may look like, however, it is expected that the regulations will impose greater obligations on those offering rent-to-buy arrangements. We will continue to monitor and provide an update when the regulations become available.

PROHIBITION OF SOME TERMS CONTRACTS

The Bill proposed to prohibit certain types of residential terms contracts. These terms contracts include where the sale price of the land specified in the contract is less than the 'prescribed amount'. The prescribed amount will be set by new regulations. It will be an offence (with the potential penalty of imprisonment) for any person to knowingly advertise, induce a person to buy, sell, arrange or broker the sale of, property under these specified terms contracts. Additionally, if a developer enters into this type of terms contract, the purchaser may be entitled to terminate the contract and have a right to have what they have paid under the contract reimbursed.

If the Bill is passed, when will these changes come into effect?

The Victorian Parliament will not sit again until after the election on 24 November 2018. If the Bill is passed, the changes will likely come into effect when parliament resumes in December 2018.

For more information or for advice about how these changes will impact your development, please do not hesitate to contact us.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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