

## Off the Plan Properties

In recent years, the sale of properties before they are built has been a popular choice for many Australians.

Have you ever wondered what are you buying when you purchase a property “off the plan”? In essence you are buying into an idea, a vision or perhaps a plan but not the building itself – because it has not yet been built. Off the plan property may look inviting but be sure to fully understand the deal first!

Whilst you may be often reminded by developers and estate agents of the many advantages of an off the plan purchase, remember that there are also a significant number of risks and uncertainties that you need to be aware of. This is particularly the case if you are buying in a strata development or a retirement village and detailed legal advice should be sought before you enter into such a transaction.

Is the Off the Plan Contract any old contract?

No! An off the plan contract is a very complex legal document which contains numerous special conditions. Simply look at the length of the contract itself and you do not need to be legally trained to know that it is very difficult to understand.

Often the off the plan contract is heavily weighted in favour of the developer giving them the ability to delay settlement and even terminate the contract if the project is not viable. There may also be limits on your rights with respect to the building work and your ability to claim compensation for delays or if you are not happy with the finished product. Ultimately, it is up to you to choose whether you wish to understand the terms of the contract and therefore make an informed decision about your investment before you sign on the dotted line.

Whilst most off the plan properties will settle smoothly, please remember that if things do not go according to plan, the only thing which you can rely on is the contract (and not the bricks or walls – because they don't exist!), therefore make sure you are happy with it before you sign it.

### Contract date, Deposit & Settlement

You may sign a contract today, but Settlement will not happen until the building is finished – sometimes this means in 2-3 years' time. Upfront, you will be required to pay the 10% deposit in order to secure your purchase. Once the building is completed, the balance of the purchase price will be paid at Settlement.

Settlement usually occurs 14 days after registration of the plan of subdivision or obtaining the occupancy permit. Therefore, make sure that you follow up the anticipated settlement date with your developer leading up to settlement to ensure that you have finance ready when the day comes.

### Vendor cancellation

Most off the plan contracts will contain a special condition which enables a developer to cancel the contract if the developer is of the opinion that the project is no longer viable. Sometimes this may be caused by insufficient pre-sales, other times it may be due to limitations on finance or onerous restrictions imposed by local councils.

Some contracts will specifically provide that you will not be able to claim any compensation against the developer if the contract is cancelled in this way. Often the developer is given a significant period of time to cancel the contract which can range between 18 months to 3 years from the date of sale.

It is also important to read this condition against whether the contract enables you to cancel the contract if long delays occur. Often, the ability to cancel contracts is reserved only for the developer and not the purchaser. It is important to read each individual contract to ascertain whether this is the case for your purchase.

## Can I sell the property before Settlement?

This depends on the contract. In many off the plan contracts there may be a special provision which prohibits a purchaser from re-selling their lot prior to settlement, especially if the developer is still trying to sell lots. If you have concerns about the potential for re-sale of a particular lot, please contact our office for specific advice on your property.

## FIRB and Foreign Investors

The government has made special allowances to enable foreign nationals to invest in new properties in Australia therefore it is quite common for foreign investors to purchase properties off the plan.

Some developers may have also sought approval from FIRB for their building. If this is the case the Contract of Sale will usually specify the requirements applicable to foreign investors. Otherwise, we will be happy to assist foreign investors to apply for approval and purchase properties off the plan anywhere in Australia.

## What if I'm not happy with the finished product?

This is indeed one of the most significant risks associated with off the plan purchases. Of course it is important to choose a property from a reputable builder and/or developer, however, if you are concerned about defects rectification it would be wise to carefully review the terms concerning defects in your contract.

Most off the plan contracts will contain specific timeframes and procedures about how defects are to be identified and rectified. If you have disputes with the builder / developer you may also choose to engage our dispute resolution and litigation lawyers to negotiate this matter on your behalf.

You may also wish to seek further legal advice about the scope to which other legislative regimes may be able to assist you – for example building warranty insurance and the application of building and construction law.

## Reduced Stamp duty?

Stamp duty is payable on the value of the land and buildings as at the date of the Contract of Sale. Therefore, if construction has not yet commenced, then there is potential for a sizable reduction on the amount of stamp duty payable as compared with an existing property purchase.

However, you should be aware that the actual stamp duty concessions are not necessarily calculated based on the land value stated by the estate agent or in the vendor's marketing material. It is based on the value of the work which is performed and this will only be known after the contract is signed and the project is completed.

Therefore, the greatest stamp duty concessions will be applied to a contract which is signed before any construction has commenced. The closer the building is to completion the less savings a purchaser will make on stamp duty.

## Owners Corporation or Body Corporate

If your off the plan development is part of a subdivision then you are likely to be subject to a Owners Corporation or Body Corporate. In this case, you should also read our **fact sheet** regarding subdivided property and seek further legal advice on the matter.

If you are considering buying or selling off the plan and wish to obtain additional or specific legal advice, please [contact us](#) for a quote today.