

LICENSING, REGULATION AND ALCOHOL STRATEGY

Buying off the Plan

Sometimes developments are advertised for sale before the building has been constructed. This is commonly known as buying 'off the plan'. This fact sheet outlines the issues that you need to be aware of when buying off the plan.

What Is Buying 'Off The Plan'?

Many developments are sold 'off the plan'. This means that the contract for the purchase of the lot, whether a house, duplex, flat, unit or apartment, is entered into before the title is created and the building is constructed.

In land developments, the sale is often associated with a building contract for the construction of a house, either with the developer or a nominated builder. Buying 'off the plan' usually involves prospective buyers viewing architectural plans, sketches or models or visiting a display home or other form of display.

If you are considering buying a property 'off the plan' you should be aware of the pros and cons and the protection afforded to the buyer. You should get a predicted completion date from the developer and you should seek legal advice before signing a contract.

Advantages of Buying 'Off the Plan'

Some of the advantages of buying 'off the plan' are:

- there may be stamp duty benefits as stamp duty is calculated on the value of the property at the date of the contract, not the value on completion of construction;
- you may have the right to have input into the design and finishes of the property. This could save you renovating or repainting if you bought an existing property; and
- profit may be made from an increase in market price (note: the on sales of units off the plan are subject to stamp duty implications).

Risks Of Buying 'Off The Plan'

Some of the risks of buying 'off the plan' are:

- the property is unseen. Whilst architectural plans, sketches, models or displays may be viewed, the finished product cannot be viewed or assessed;

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- completion dates can be uncertain and there may be delays in construction caused by the weather, contractors, material and goods supply and other factors. Move-in dates can therefore be uncertain;
- the building plans may need to be amended during the construction process. This can mean that the finished product may not be identical to the original plan;
- the precise quality and standard of fixtures and fittings can be unknown and the final product may not meet expectations;
- the developer may have authority to vary the finishes without the purchaser's consent;
- the market may fluctuate and in the event of a market downturn, the original purchase price may not be returned on resale;
- the unit entitlement of the various lots (which determines voting power at body corporate meetings and amount of levy contributions) may not be known at the time that the development is advertised for sale; and
- the developer may have entered into long term management contracts which may not be able to be changed by the body corporate, once constituted.

Protections for Buying 'Off the Plan'

There are protections that exist when buying off the plan. These include:

- deposits must be held in a trust account held by a licensed real estate agent, licensed conveyancing agent or lawyer;
- if the time requirements for settlement are exceeded, the purchaser has the right to cancel without penalty;
- a standard contract provides for a 13-week defects clause. The developer is required to fix the defects on notification of the defects; and
- amendments to the *Building Act*, which are yet to be commenced, provide for the regulation of residential building works with a value greater than \$12,000, the registration of home builders and the introduction of compulsory home warranty insurance for non-completion and non-compliance of works.

The Contract

Usually a contract to purchase is signed, but the date for completion of the contract will not be determined until completion of the building and registration of the units plan. The buyer will usually pay a deposit and pay the balance of the purchase price on settlement.

The conditions of the contract should be closely checked and you should seek legal advice on the benefits or restrictions provided by the terms of the contract and any matters which are not understood. Questions that you may wish to ask are:

- can changes be made to the finishes in the kitchen, bathroom and laundry?
- can appliances and other items be selected such as stove, dishwasher, floor and wall tiles?
- can the site be visited during construction?