

# ALERT

5 SEPTEMBER 2012

## *Residential Tenancies and Other Consumer Acts Amendment Bill 2012*

### **Warning notices for off-the-plan sales**

Section 57 of the *Consumer Affairs Legislation Amendment (Reform) Act 2010* (**Reform Act**) inserts a new s 9AA(1A) into the *Sale of Land Act 1962* (**SLA**) with regard to 'off the plan' sale contracts.

The new section imposes an additional requirement on the vendor to include on the front page of an 'off the plan' sales contract, a notice to the purchaser stating that:

- Subject to the limit set by section 9AA(1)(b) of the *Sale of Land Act 1962* (Vic), the purchaser may negotiate with the vendor about the amount of deposit moneys payable under the contract.
- A substantial period of time may elapse between the day on which the purchaser signs the contract for sale and the day on which the purchaser becomes the registered proprietor of the lot.
- The value of the lot may change between the day on which the purchaser signs the contract for sale of that lot and the day on which the purchaser becomes the registered proprietor.

The recent *Residential Tenancies and Other Consumer Acts Amendment Bill 2012* (**Bill**) proposes to amend the Reform Act so that the notice **would not** have to be on the front page of the contract. Rather, the provision would require that the contract **contain a conspicuous** notice to the purchaser.

Under the Reform Act, a failure to include the warning would entitle a purchaser to rescind the contract at any time before registration of the plan of subdivision. However, the Bill also proposes to amend s 9AE(1) of the SLA, which deals with rescission rights under 'off the plan' sales contracts. The change would in effect mean that a failure by the vendor to include the notice to the purchaser **would not** entitle the purchaser to rescind the contract in accordance with s 9AE.

### **What this means for developers**

Developers should amend their precedent off-the-plan contracts of sale to include the three bullet points above in time for the 1 December 2012 deadline.

If the Bill is passed, the warning need not be on the front page and developers will be able to keep marketing materials on the front



# ALERT

page and include the notice elsewhere. However, the notice will need to be conspicuous.

Developers should note that the first bullet point does not affect the maximum allowable deposit under an 'off-the-plan' sales contract. It is included to draw the purchaser's attention to their right to negotiate the deposit with a vendor (subject to the maximum allowable deposit, which under the SLA is 10% of the purchase price of the lot).

While it is true that if the Bill is passed, purchasers would not be entitled to rescind the contract pursuant to s 9AE, s 16 of the SLA provides that a person who sells land in contravention of the provisions of the Act is guilty of an offence and liable to a penalty of not more than 10 penalty units. A penalty unit is currently \$140.84, meaning a developer may be subject to a maximum penalty of \$1,408.40 for each contravention of the SLA.

In addition, for what might be a serial offender, there are a suite of enforcement provisions under s 48A of the SLA, which applies the recently introduced *Australian Consumer Law and Fair Trading Act 2012* (Vic).

Authored by: **Joanna Shields**, Cornwall Stodart

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**For further information or for assistance in drafting compliant 'off-the-plan' contracts, please contact:**

**Jamie Bedelis**, Senior Associate  
Phone (direct) **+61 3 9608 2130**  
Mobile **+61 431 519 383**  
Email [j.bedelis@cornwalls.com.au](mailto:j.bedelis@cornwalls.com.au)

**Antony Chung**, Senior Associate  
Phone (direct) **+61 3 9608 2165**  
Mobile **+61 414 939 448**  
Email [a.chung@cornwalls.com.au](mailto:a.chung@cornwalls.com.au)